Supreme Court, U.S.
FILED

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No.

In the Supreme Court of the United States

OVERNITE TRANSPORTATION COMPANY,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al.,

Respondents.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

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68 pp

QUESTION PRESENTED

Whether the Illinois Appellate Court's decision to bar a state tort action because a charge was filed with the National Labor Relations Board violates the Supremacy Clause of the United States Constitution (Article VI, Clause 2) and contradicts prior decisions of this Court.

PARTIES TO THE PROCEEDINGS BELOW

In addition to the parties stated in the caption, Respondents include Teamsters Local Union Nos. 41, 120, 135, 414, 705, 710, 714 and 781, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Phillip Young, Ronald Foster, Walter A. Lytle, Robert Kruezer, William Hogan, Jr., Robert Vickney, John Murphy, Dane Passo, Patrick Flynn, Joseph Bernstein, Kevin Moore, David Cameron, and John Does One Through 250.

CORPORATE DISCLOSURE STATEMENT

Petitioner, Overnite Transportation Company, makes this corporate disclosure statement pursuant to Supreme Court Rule 29.6:

Overnite Corporation owns 100% of the stock of Overnite Transportation Company. Overnite Corporation also owns Motor Cargo Industries, Inc. Overnite Corporation is wholly owned by Overnite Holding, Inc., and Overnite Holding, Inc. is wholly owned by Union Pacific Corporation.

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS BELOW ii

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED 2

Constitutional Provision 2

Federal Statutory Provisions 2

State Code Provision 4

STATEMENT OF THE CASE 4

A. THE FACTS 4

1. Petitioner's Complaint in State Court Alleges that Respondents Engaged in Tortious Activity Against Petitioner During a Labor Dispute 4

2. Petitioner Files an NLRB Charge 5

B. THE STATE COURT DECISIONS 6

1. The Illinois Circuit Court Dismisses Petitioner's Tort Complaint Because Petitioner Previously Filed An NLRB Charge 6

2. The Illinois Appellate Court Affirms the Circuit Court's Dismissal 8

3. The Supreme Court of Illinois Refuses to Consider the Issue 9

REASONS FOR GRANTING THE PETITION 9

THE ILLINOIS APPELLATE COURT'S APPLICATION OF SECTION 2-619(a)(3) OF THE ILLINOIS CODE OF CIVIL PROCEDURE VIOLATES THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION AND DIRECTLY CONFLICTS WITH PRIOR DECISIONS OF THIS COURT 9

CONCLUSION 18

APPENDIX

Appendix A – October 2, 2002 Order of the Supreme Court of Illinois ..... App. 1

Appendix B – June 19, 2002 Decision of the Illinois Appellate Court ..... App. 2

Appendix C – February 1, 2000 Order of the Circuit Court of Cook County, Illinois ..... App. 17

Appendix D – July 14, 1999 Civil Complaint ... App. 18

Appendix E – June 23, 1999 Second Amended NLRB Charge ..... App. 33

Appendix F – November 18, 1999 NLRB Complaint ..... App. 35

Appendix G – Excerpt of February 1, 2000 Proceedings in the Circuit Court of Cook County, Illinois ..... App. 40

TABLE OF AUTHORITIES

PAGE(S)

FEDERAL CASES

Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767 (1947) 12

Brown v. Hotel & Restaurant Employees & Bartenders, 468 U.S. 491 (1984) 7, 13

Livadas v. Bradshaw, 512 U.S. 107 (1994) ... 7, 8, 13, 17

McCulloch v. Maryland, 17 U.S. 316 (1819) 9, 10

NLRB v. Indiana & Michigan Electric Co., et al., 318 U.S. 9 (1943) 11

NLRB v. Industrial Union of Marine & Shipbuilding Workers, 391 U.S. 418 (1968) 11, 12

NLRB v. Scrivener, 405 U.S. 117 (1972) 11

Nash v. Florida Indus. Comm'n, 389 U.S. 235 (1967) 7, 8, 13, 17

Operating Engineers Local 39 (Kaiser Foundation), 268 N.L.R.B. 115 (1983) 11, 12

Operating Engineers Local 138 (Charles S. Skura), 148 N.L.R.B. 679 (1964) 12

United Auto., Aircraft and Agr. Implement Workers of America v. Wisconsin Employment Relations Bd., 351 U.S. 266 (1956) 14

United Const. Workers, Affiliated with United Mine Workers of America v. Laburnum Const. Corp., 347 U.S. 656 (1954) 16

FEDERAL STATUTES

U.S. CONST. art. VI, cl. 2 ..... 2, 7, 9, 10

28 U.S.C. § 1257(a) 1

28 U.S.C. § 2403(b) 1

29 U.S.C. § 157 ..... 2, 5, 6, 14

29 U.S.C. § 158(b)(1)(A) ..... *passim*

29 U.S.C. § 160(a) 11

29 U.S.C. § 160(b) 3, 11

29 U.S.C. § 160(c) 3

29 U.S.C. § 160(f) 3

Taft-Hartley Act of 1947, 61 Stat. 136, Pub. L. No. 80-101 (1947) 14

STATE STATUTE

735 ILCS 5/2-619(a)(3) ..... *passim*

OTHER

93 Cong. Rec. 4145 (April 25, 1947) 14, 15

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the decision of the Illinois Appellate Court, First District, entered in the above-entitled case on June 19, 2002.

OPINIONS BELOW

The unreported decision of the Supreme Court of Illinois denying Petitioner's Petition for Appeal as a Matter of Right and, Alternatively, for Leave to Appeal appears in Appendix A, *infra*. (Pet. App. 1.) The opinion of the Illinois Appellate Court, First District, is reported at 332 Ill. App. 3d 69, 773 N.E.2d 26, and appears in Appendix B, *infra*. (Pet. App. 2-16.) The unreported final order of the Circuit Court of Cook County, Illinois appears in Appendix C, *infra*. (Pet. App. 17.)

JURISDICTION

The judgment of the Illinois Appellate Court, First District was entered on June 19, 2002. The Supreme Court of Illinois denied review on October 2, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

Since the proceeding draws into question the constitutionality of the Illinois Appellate Court's application of Section 2-619(a)(3) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3), a statute of the State of Illinois affecting the public interest, and neither the State of Illinois nor any agency, officer, or employee thereof is a party, it is noted that 28 U.S.C. § 2403(b) may be applicable. Petitioner has served copies of this Petition on the Illinois Attorney General pursuant to Supreme Court Rule 29.4(c).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Constitutional Provision

Article VI, Clause 2 of the Constitution of the United States provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding."

Federal Statutory Provisions

Section 7 of the National Labor Relations Act ("NLRA") (29 U.S.C. § 157) provides:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

Section 8(b)(1)(A) of the NLRA (29 U.S.C. § 158(b)(1)(A)) provides in relevant part as follows:

> (b) "It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section [7] of this title. . . ."

Section 10 of the NLRA (29 U.S.C. § 160) provides in relevant part as follows:

> (b) "Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges. . . ."
>
> (c) ". . . If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice. . . ."
>
> * * *
>
> (f) "Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business. . . ."

State Code Provision

Section 2-619(a)(3) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(3)) provides:

> "(a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. . .
>
> (3) that there is another action pending between the same parties for the same cause."

STATEMENT OF THE CASE

The Illinois Circuit and Appellate Courts held that a party's decision to exercise its right to seek relief under federal law, by filing an unfair labor practice charge with the National Labor Relations Board, precludes that party from maintaining a civil action under Illinois state law to recover state law tort damages.

A. THE FACTS

1. Petitioner's Complaint in State Court Alleges that Respondents Engaged in Tortious Activity Against Petitioner During a Labor Dispute.

Petitioner is a common carrier engaged in the interstate transportation of freight through a network of service centers, including a service center located in Bedford Park, Illinois. Respondents are the International Brotherhood of Teamsters ("IBT"), Phil Young ("Young"), its Director of Freight Operations, and several Teamster Local Unions affiliated with the IBT, including Local Union No. 705, which is the bargaining representative of certain employees at the Bedford Park service center. Petitioner's Complaint

also named as additional Defendants (herein Respondents) specified officers and agents of the Local Unions.

On July 14, 1999, Petitioner filed in the Circuit Court of Cook County, Illinois the Complaint, a copy of which is attached at Appendix D. (Pet. App. 18-32.) The Complaint alleged that Respondents planned to assemble together at Petitioner's Bedford Park facility and to there commit trespass, assault and battery. It further alleged that Respondents carried out that plan and that Petitioner was harmed thereby.

Petitioner's Complaint recited as background the labor dispute leading up to the events of June 15, 1999, and alleged three state-law causes of action arising from Respondents' actions that day, including: (1) unlawful trespass; (2) tortious interference with Petitioner's existing customer relationships and prospective relationships; and (3) conspiracy against Petitioner in order to either force Petitioner's employees to accept Teamster representation against their will and force Petitioner to accept a Teamsters-dictated contract, or put Petitioner out of business. (Pet. App. 18-32.) Each count requested monetary compensation for the damages inflicted upon Petitioner.

2. Petitioner Files an NLRB Charge.

On June 23, 1999, Petitioner filed a second amended unfair labor practice charge ("Charge") with the National Labor Relations Board ("NLRB").[1] A copy of this Charge is attached at Appendix E. (Pet. App. 33-34.) The Charge alleged that Respondents' June 15, 1999 trespass, assaults, batteries and threats restrained and coerced Petitioner's employees' rights under Section 7 and thereby violated Sec-

[1] On June 15 and 17, 1999, Petitioner filed an original and first amended charge, respectively.

tion 8(b)(1)(A) of the NLRA. 29 U.S.C. §§ 157, 158(b)(1)(A). Section 8(b)(1)(A) forbids labor organizations and their agents from restraining or coercing employees in the exercise of their federal rights under Section 7 to engage in or refrain from concerted or union activity. *Id.* Section 7 affords employers such as Petitioner no rights, and Section 8(b)(1)(A), therefore, does not prohibit restraint or coercion of any employers' rights. *Id.*

On November 18, 1999, the NLRB's Regional Director issued a Complaint ("NLRB Complaint") on behalf of the NLRB's General Counsel—the agency's statutorily established prosecutor—based on Petitioner's Charge. A copy of this NLRB Complaint is attached at Appendix F. (Pet. App. 35-39.) This NLRB Complaint alleged the same Section 8(b)(1)(A) allegations against the same parties as alleged in the Charge. Neither Petitioner's Charge nor the NLRB Complaint alleged any other unfair labor practices. Neither the Charge nor the NLRB Complaint named, in any capacity, any of the individual Defendants named in the civil Complaint.

B. THE STATE COURT DECISIONS

1. The Illinois Circuit Court Dismisses Petitioner's Tort Complaint Because Petitioner Previously Filed An NLRB Charge.

On October 25, 1999, Respondents moved in the trial court to stay or alternatively to dismiss the civil case, pursuant to Section 2-619(a)(3) of the Illinois Code of Civil Procedure. This provision permits a defendant to move for dismissal of an action if there is "another action pending between the same parties for the same cause." 735 ILCS 5/2-619(a)(3). Respondents' motion argued that Petitioner's filing of the Charge and issuance of the NLRB Complaint constituted "another action pending between the same par-

ties for the same cause" within the meaning of the Illinois Code of Civil Procedure.

In Petitioner's response brief, Petitioner addressed the constitutional issue raised by Respondents' argument:

> "4. Dismissal would violate the Supremacy Clause
>
> This Court independently must deny Defendants' Motion because it seeks to force Overnite to forego federal statutory relief. Under the United States Constitution, however, state laws cannot conflict or otherwise "stand [ ] as an obstacle" to the exercise of rights granted by federal law. *Brown v. Hotel Employees*, 468 U.S. 491, 501 (1984). The United States Supreme Court repeatedly has struck down such state laws as violative of the Supremacy Clause. U.S. CONST. art. VI, cl. 2. *See Nash v. Florida Indus. Comm'n*, 389 U.S. 235 (1967) (state statute denying benefits to persons who file NLRB charges impermissibly conflicts with federal statute). *See also Livadas v. Bradshaw*, 512 U.S. 107 (1994) (state policy could not force person to elect between NLRB right to collective bargaining and state-law right to unemployment benefits)." Response Brief of Petitioner in the Circuit Court of Cook County, p. 11-12.

Following oral argument on February 1, 2000, the Circuit Court of Cook County, Illinois held that the NLRB case was a "prior pending action between the same parties for essentially the same cause" and entered an Order dismissing the entire Complaint pursuant to Section 2-619(a)(3). (Pet. App. 17, 41.) Petitioner filed a timely Notice of Appeal from that judgment.

2. The Illinois Appellate Court Affirms the Circuit Court's Dismissal.

On appeal, Petitioner argued, among other things, that dismissal of its state law tort action violated the Supremacy Clause, and that dismissal was in conflict with prior decisions of the United States Supreme Court, including *Livadas v. Bradshaw*, 512 U.S. 107 (1994) and *Nash v. Florida Indus. Comm'n*, 389 U.S. 235 (1967). Following oral argument on February 27, 2002, a panel of the Illinois Appellate Court, First District (Justice Wolfson, dissenting), issued its judgment in this case, affirming the Circuit Court's dismissal of the case. (Pet. App. 2-16.)

With respect to the Section 2-619(a)(3) issue, the Appellate Court held that, "[w]hile Overnite was not restricted in its choice of forum, once it chose to pursue the NLRB proceeding first, it was bound by the relief offered in that forum, which does not include monetary compensation." (Pet. App. 13.) Confusingly, three pages later in the same opinion, the Court stated:

> Contrary to Overnite's assertion, the present case does not invoke the supremacy clause because the application of section 2-619(a)(3) does not frustrate the enforcement of the Act. Section 2-619(a)(3) does not require a party to forego or choose between pursuing a state charge and an NLRB complaint. Rather, section 2-619(a)(3) is designed to avoid duplicative litigation and is applied to carry out that purpose. Nothing in section 2-619(a)(3) prevents a party from pursuing various forms of relief. [citations omitted].
>
> Therefore, section 2-619(a)(3) does not run afoul of the supremacy clause.

(Pet. App. 15.) The Illinois Appellate Court held that the Circuit Court of Cook County did not act arbitrarily or ig-

nore recognized principles of law in ordering the dismissal of Petitioner's Complaint pursuant to Section 2-619(a)(3). (Pet. App. 14.) Petitioner disagreed with the Appellate Court's reasoning and decision, and thus sought review before the Supreme Court of Illinois.

3. The Supreme Court of Illinois Refuses to Consider the Issue.

On July 24, 2002, Petitioner filed a timely Petition for Appeal as a Matter of Right and, Alternatively, for Leave to Appeal with the Supreme Court of Illinois. In that Court, Petitioner renewed its Supremacy Clause argument, explaining why the Illinois Appellate Court's ruling was in conflict with both the United States Constitution and prior decisions of the United States Supreme Court. (Petitioner's Petition to the Supreme Court of Illinois, pp. 9-11.) On October 2, 2002, the Supreme Court of Illinois denied Petitioner's Petition without opinion. (Pet. App. 1.)

REASONS FOR GRANTING THE PETITION

THE ILLINOIS APPELLATE COURT'S APPLICATION OF SECTION 2-619(a)(3) OF THE ILLINOIS CODE OF CIVIL PROCEDURE VIOLATES THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION AND DIRECTLY CONFLICTS WITH PRIOR DECISIONS OF THIS COURT.

More than 175 years ago, this Court held that the States may not "retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress." *McCulloch v. Maryland*, 17 U.S. 316, 436 (1819). That bedrock proposition flows from the Supremacy Clause of the United States Constitution, which states, in relevant part, that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall

be the supreme Law of the Land; and the Judges in every State shall be bound thereby. . . ." U.S. CONST., art. VI, cl. 2.

The decision of the Illinois Appellate Court in this case, however, does precisely what the Supremacy Clause and the principles of *McCulloch v. Maryland* forbid. By prohibiting Overnite from maintaining its state law action against the Defendants solely because Overnite also exercised its right under the National Labor Relations Act, 29 U.S.C. §§ 151, *et seq.*, to file an unfair labor practice charge related to the same conduct, the Illinois courts unconstitutionally impaired "the operations of the constitutional laws enacted by Congress."

Here, the Defendants' conduct on June 15, 1999 gave rise to two independent causes of action, one under Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. § 158(b)(1)(A), the other under Illinois state law for trespass, tortious interference and conspiracy. The Illinois Appellate Court dismissed Overnite's state law claims pursuant to Section 2-619(a)(3) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3), because Overnite exercised its right under federal law to file an unfair labor practice charge with the National Labor Relations Board to vindicate the federal labor law rights of its employees—rights for which state law provides no remedy—and because that charge was based on the same factual events as its state law complaint. Shutting the courthouse doors under these circumstances deprived Overnite of any remedy for the injuries it suffered simply because it sought to vindicate the federal rights of its employees. That deprivation is not only indefensible as a matter of rational interpretation of state law, but also unconstitutional.

In explaining its decision, the Illinois Appellate Court held that "once [Overnite] chose to pursue the NLRB proceeding first, it was bound by the relief offered in that

forum, which does not include monetary compensation." (Pet. App. 13.) In response to Overnite's Supremacy Clause argument, the Illinois Appellate Court defended its construction of Section 2-619(a)(3) by reciting that "[n]othing in section 2-619(a)(3) prevents a party from pursuing various forms of relief." (Pet. App. 15.)

These two statements cannot be logically reconciled. If, as the court held, Overnite is bound by its election to "pursue the NLRB proceeding first" and is thereby barred from pursuing its state law action, then it is indeed "prevent[ed] . . . from pursuing various forms of relief" by being denied access to the Illinois courts. The court's ruling requires that Overnite choose whether to pursue its federal right to file an unfair labor practice charge to enforce its employees' federal rights or its state right to bring a tort action in the Illinois courts to recover monetary damages for the injuries it sustained. Forcing this choice, however, undeniably discourages enforcement of the National Labor Relations Act, inasmuch as if Overnite chooses the latter, a potential violation of that Act goes uninvestigated and unremedied, and also frustrates Congress' clear intent that persons with information related to unfair labor practices be free to file such charges.[2] *NLRB v. Industrial Union of Marine &*

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[2] Section 10(a) of the Act empowers the National Labor Relations Board ("Board")—the federal administrative agency charged with enforcing the Act—to investigate and initiate proceedings against persons alleged to have committed unfair labor practices. 29 U.S.C. § 160(a). The Board, however, may not initiate those proceedings on its own; such proceedings can be initiated only by the filing of an unfair labor practice charge. 29 U.S.C. § 160(b); *NLRB v. Scrivener*, 405 U.S. 117, 121 (1972). The Act is a public statute, meaning that any person, including employers, may file unfair labor practice charges. *NLRB v. Indiana & Michigan Electric Co., et al.*, 318 U.S. 9, 18 (1943); *Operating Engineers Local 39 (Kaiser*

(continued...)

Shipbuilding Workers, 391 U.S. 418, 424 (1968) ("overriding public interest" favors "unimpeded access to the Board."). Illinois cannot meddle with those rights, created by Congress, by denying access to its courts simply because Overnite followed the federal statutory scheme for seeking relief under the National Labor Relations Act.

That Illinois may legislate conditions upon those who may maintain actions in its courts is without question. It is equally without question, however, that such legislation, and the decisions of Illinois courts interpreting that legislation, may not impair rights created by federal law. *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767, 773 (1947) ("the state may not so deal with matters left to its control as to 'stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' ") (citation omitted). That is the essence of the Supremacy Clause. Here, by forcing Overnite to choose between exercising its federal right to file an unfair labor practice charge or access to the Illinois courts, the Illinois courts have directly burdened the enforcement of the National Labor Relations Act. In order to maintain its state law action, Overnite must forego its right to file an unfair labor practice charge, thereby leaving unremedied the rights of its employees to be free of union restraint and coercion. "The right to file charges is indispensable to the administration of the Act since the Board cannot initiate its own processes and no unfair labor practice complaint can issue in the absence of a valid charge." *Operating Engineers Local 138 (Charles S. Skura)*, 148 N.L.R.B. 679, 680 (1964), *cited with approval in NLRB v. Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418, 424 (1968). The

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[2] (...continued)
Foundation), 268 N.L.R.B. 115, 116 (1983) ("The simple fact is that anyone for any reason may file charges with the Board.")

choice Illinois courts have now imposed on employers—and *a fortiori* on employees and unions as well—compromises enforcement of the Act in that it permits a potential violation to go unredressed.

The United States Supreme Court sustained a similar Supremacy Clause challenge to a Florida law over 30 years ago. In *Nash v. Florida Indus. Comm'n*, 389 U.S. 235 (1967), the Florida Industrial Commission ruled that, pursuant to a Florida statute that denied unemployment compensation to employees involved in a labor dispute, an unemployed person was not entitled to continue receiving compensation after filing an unfair labor practice charge with the NLRB. Applying the Supremacy Clause, this Court held that the Florida law as applied was invalid because it forced the employee to make a choice between receiving state unemployment compensation benefits and exercising a right under federal law to file an unfair labor practice charge. *Nash*, 389 U.S. at 239. The Court explained that states cannot "frustrate the purpose of Congress to leave people free to make charges of unfair labor practices to the Board." *Id.*

Likewise, in *Livadas v. Bradshaw*, 512 U.S. 107 (1994), this Court struck down a California state court decision because it forced an employee to choose between state law rights and federal labor law rights. 512 U.S. at 117. In reaffirming *Nash*, the Court stated, "[a] state rule predicating benefits on refraining from conduct protected by federal labor law poses special dangers of interference with congressional purpose." *Id.* at 116. *See also Brown v. Hotel & Restaurant Employees & Bartenders*, 468 U.S. 491, 501 (1984) (state law that interferes with protected rights under the Act "creates an actual conflict and is pre-empted by direct operation of the Supremacy Clause.").

Overnite's Supremacy Clause argument also finds support in the legislative history of the Taft-Hartley amend-

ments to the National Labor Relations Act.[3] During debate on the Senate floor, a question was raised as to why certain acts by labor organizations that would constitute violations of state law also should be deemed violations of federal labor law. Senator Pepper argued that doing so was unnecessary "because the citizens of the country are still protected by the law of the land against coercion from other citizens or organizations." 93 Cong. Rec. 4145 (daily ed. April 25, 1947) (statement of Sen. Pepper). Senator Taft, co-author of the amendments, responded:

> There are plenty of methods of coercion short of actual violence. So that in this section [referring to Section 8(b)(1)(A)] there is no duplication whatever. But suppose there is duplication in the extreme cases; suppose there is a threat of violence constituting violation of the law of the State. Why should it not be an unfair labor practice? It is on the part of the employer. If an employer proceeds to use violence, as employers once did, if they use the goon-squad tactics labor unions are permitted to use—and they once did—if they threaten men with physical violence if they join a union, they are

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[3] In 1947, Congress enacted the Taft-Hartley amendments to the National Labor Relations Act. Taft-Hartley Act of 1947, 61 Stat. 136, Pub. L. No. 80-101 (1947). Prior to these amendments, only employers could commit unfair labor practices. The Taft-Hartley amendments "recognized that labor organizations also might commit unfair labor practices to the detriment of employees," and made certain union practices unlawful. *United Auto., Aircraft and Agr. Implement Workers of America v. Wisconsin Employment Relations Bd.*, 351 U.S. 266, 272 (1956). One of these amendments was a provision, contained at 29 U.S.C. § 158(b)(1)(A), that made it an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of those rights guaranteed by Section 7 of the Act, 29 U.S.C. § 157.

> subject to State law, and they are also subject to be proceeded against for violating the National Labor Relations Act. There is no reason in the world why there should not be two remedies for an act of that kind.

Id. (statement of Sen. Taft). These comments make clear that it was never Congress' intent that a party whose both federal and state rights have been affected be limited to pursuing remedies in only one forum. Consider the consequences of such an interpretation—that if a party files an NLRB charge, he, she or it may not seek any state civil remedy whenever the events that give rise to a state claim arise from the same facts and circumstances as those involved in the NLRB charge. Such an interpretation could lead to disastrous, certainly unintended consequences. For example, rather than simple trespass and interference with property and business rights, suppose the Defendants here had set fire to Overnite's property, burning down Overnite's multi-million dollar Bedford Park facility. If it occurred in the presence of employees, such arson most definitely would violate Section 8(b)(1)(A) of the National Labor Relations Act, and would properly be the subject of a charge with the Board to vindicate those employees' federal labor law rights. The same conduct, of course, also would violate state civil (and most likely criminal) law, and Overnite, as the property owner, could sue to recover money damages for the destruction of its property. Under the Illinois Appellate Court's decision, however, if Overnite filed that NLRB charge, for which the only remedy would be a cease and desist order directed to vindicating the rights of Overnite's employees, Overnite could not pursue damages for the complete loss of its facility.

The perversity of such a result, however, has been recognized by this Court. Indeed, this Court has addressed specifically the incompleteness of the remedial scheme under federal labor law, and the interplay between that

limited scheme and the more comprehensive relief available under state law. In *United Const. Workers, Affiliated with United Mine Workers of America v. Laburnum Const. Corp.*, 347 U.S. 656 (1954), this Court held that the National Labor Relations Act did not preempt states from enforcing state laws relating to conduct that also constitutes an unfair labor practice. The Court noted that where "Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated." 347 U.S. at 665. Here, the Act's remedial scheme does not allow for monetary damages for trespass, property damage, and other damages that Defendants' conduct inflicted on Overnite. Thus, if Illinois refuses to grant Overnite access to its courts to seek that relief, it will be without a remedy. The Court in *Laburnum* rejected such an outcome:

> If Virginia is denied jurisdiction in this case, it will mean that where the federal preventive administrative procedures are impotent or inadequate, the offenders, by coercion of the type found here, may destroy property without liability for the damage done. If petitioners were unorganized private persons, conducting themselves as petitioners did here, Virginia would have had undoubted jurisdiction of this action against them. The fact that petitioners are labor organizations, with no contractual relationship with respondent or its employees, provides no reasonable basis for a different conclusion.

347 U.S. at 669.

It is no answer for the Illinois courts to say that they may as a matter of state law protect their courthouses from multiple actions arising from the same events. Overnite brought only a single action in an Illinois court, and that action was barred simply because Overnite had filed an

unfair labor practice charge in a federal administrative forum. However strong Illinois' interest in keeping its courthouses uncluttered, it has no such interest when the other action is a charge before a federal administrative agency, and it cannot advance any interest it has by burdening the exercise of a federal right.

The Illinois Appellate Court's decision in this case directly conflicts with this Court's decisions in *Nash* and *Livadas* and violates the Constitution's Supremacy Clause. If the Appellate Court's decision is not reversed, Overnite and other Illinois employers, as well as employees and unions, will be forced to choose between pursuing state law remedies or federal NLRB charges. They predictably will be deterred from pursuing those federal charges, because those charges cannot provide monetary relief for personal injuries or property damage, in order to pursue state law claims, which do provide monetary compensation to injured plaintiffs. Forcing employers (and injured employees) to make such a choice is unconstitutional, as it frustrates Congress' intention that "all persons with information about [unfair labor] practices [ ] be completely free from coercion against reporting them to the Board."[4] *Nash*, 389 U.S. at 238.

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[4] Inasmuch as the issues in this case impact the rights of Illinois employers, employees and unions to file charges with the Board, and thereby impact the Board's ability to enforce the Act, Overnite respectfully suggests that the Court seek the position of the National Labor Relations Board through a request to the Solicitor General that the Government submit an *amicus* brief on the issue raised in Overnite's petition for writ of *certiorari*.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Honorable Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

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Attorneys for Petitioner

Dated: December 27, 2002

APPENDIX

APPENDIX A

Filed: October 2, 2002
Supreme Court of Illinois
Springfield, Illinois

No. 94400

STATE OF ILLINOIS

IN SUPREME COURT

Overnite Transportation Company,
Petitioner,

vs.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, et al., etc.,
Respondents.

Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 24, 2002.

APPENDIX B

Filed: June 19, 2002
Illinois Appellate Court, First District, Third Division
Chicago, Illinois

No. 1-00-0334

STATE OF ILLINOIS

APPELLATE COURT

Overnite Transportation Company,
Plaintiff-Appellant,

vs.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Teamsters Local Union Nos. 41, 120, 135, 414, 705, 710, 714 and 781, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Phillip Young, Ronald Foster, Walter A. Lytle, Robert Kruezer, William Hogan, Jr., Robert Vickney, John Murphy, Dane Passo, Patrick Flynn, Joseph Bernstein, Kevin Moore, David Cameron, and John Does Through 250,
Defendants-Appellees.

PRESIDING JUSTICE HALL delivered the opinion of the court:

The plaintiff, Overnite Transportation Company (Overnite) filed a complaint seeking damages for trespass, tortious interference with existing and prospective business

relationships and civil conspiracy against the defendants, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Teamsters Local Union Numbers 41, 120, 135, 414, 705, 710, 714 and 781, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, certain named officers and agents and unknown individuals. The circuit court dismissed the suit pursuant to section 2-619(a)(3) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619(a)(3) (West 1998)). Overnite filed this timely appeal.

After the briefs were filed in this case, the defendant-appellees filed a motion requesting oral argument which we ordered taken with the case. Subsequently, this court allowed oral argument in this case. We therefore strike the motion requesting oral argument as moot. We now turn to the merits of this appeal.

On July 14, 1999, Overnite filed the instant complaint against the defendants in the circuit court of Cook County. It is not disputed that, prior to filing the complaint, on June 15, 1999, Overnite filed an unfair labor practice charge with the National Labor Relations Board (NLRB) based upon the same facts that it set forth in the complaint filed in this case. Other factual allegations pertinent to our review are taken from the complaint and are set forth below.

Overnite is a common carrier engaged in the interstate transportation of freight and maintains a freight service center in Bedford Park, Illinois. Beginning in the fall of 1994, the defendants engaged in efforts to organize Overnite's freight-handling employees and to gain collective bargaining agreements for various separate units of Overnite's employees. Sometime prior to June 14, 1999, the defendants conspired to commit various tortious and criminal acts against Overnite and its employees to force them to accept union representation and a Teamster contract. On

June 15, 1999, the defendants, some armed with axe handles disguised as picketing posters, arrived at Overnight's Bedford Park facility, where they forced their way into the facility, injured security persons and marched around the facility making obscene gestures and shouting obscenities and threats at Overnite employees who refused to support them. After some 20 to 30 minutes, the defendants left the facility but threatened to return and repeat their unlawful acts unless Overnite and its employees capitulated to their demands.

The defendants filed a motion to dismiss Overnite's complaint. Specifically, the defendants alleged that the complaint should be dismissed pursuant to section 2-619(a)(3) of the Code, which provides as follows:

> "(a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. ***
>
> ***
>
> (3) That there is another action pending between the same parties for the same cause." 735 ILCS 5/2-619(a)(3) (West 1998).

The sole issue on appeal is whether the circuit court erred in dismissing Overnite's complaint pursuant to section 2-619(a)(3).

I. Standard of Review

Generally, a court of review applies a *de novo* standard to a motion to dismiss because the motion does not require the trial court to weigh facts or determine credibility. *Hapag-Lloyd (America), Inc. v. Home Insurance Co.*, 312 Ill. App. 3d 1087, 1090, 729 N.E.2d 36, 39 (2000). However, when such a motion to dismiss is inherently procedural, such as

a section 2-619(a)(3) motion seeking dismissal because another action is pending between the parties or the same cause, the motion urges the trial court to weigh several factors to determine if it is appropriate for the action to proceed. *Hapag-Lloyd*, 312 Ill. App. 3d at 1090, 1096, 729 N.E.2d at 39, 43. Where the trial court has weighed the factors in determining whether to grant a dismissal or stay of the proceedings, the trial court's decision is reviewed under an abuse of discretion standard. See *Hapag-Lloyd*, 312 Ill. App. 3d at 1090-91, 729 N.E.2d at 39.

The record in this case reveals that the circuit court based its decision on the factors it believed that it was required to consider. Therefore, we will review the circuit court's decision under the abuse of discretion standard.[1]

II. Analysis

Section 2-619(a)(3) is designed to avoid duplicative litigation and is to be applied to carry out that purpose. *Kellerman v. MCI Telecommunications Corp.*, 112 Ill. 2d 428, 447, 493 N.E.2d 1045, 1053 (1986). Pursuant to section 2-619(a)(3), the defendant may move for a dismissal or stay of the action. *Kellerman*, 112 Ill. 2d at 447, 493 N.E.2d at 1053. It is the burden of every section 2-619(a)(3) movant to demonstrate through clear and convincing evidence that the two actions involve both the same parties and the same cause. *Hapag-Lloyd*, 312 Ill. App. 3d at 1091, 729 N.E.2d at 40.

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[1] The dissent favors a *de novo* standard, citing *Miller v. Thomas*, 275 Ill. App. 3d 779, 656 N.E.2d 89 (1995). However, in that case, the trial court's decision was based upon the pleadings without making any discretionary analysis or weighing of the evidence.

A. The NLRB Proceeding

Overnite begins by contending that the NLRB proceeding is not an "action" within the meaning of section 2-619(a)(3).

Previous cases have not addressed this precise issue. In fact, the Illinois Supreme Court has specifically declined to decide whether a proceeding before an administrative tribunal with the power to issue a final, binding and enforceable decision constitutes an "action" within the meaning of section 2-619(a)(3). *Tumminaro v. Tumminaro*, 198 Ill. App. 3d 686, 692, 556 N.E.2d 293, 297 (1990); see *Ransom v. Marrese*, 122 Ill. 2d 518, 530-31, 524 N.E.2d 555, 561 (1988).

In *Ransom*, our supreme court held that a proceeding before a medical review board did not qualify as a judicial proceeding, *i.e.*, its members were not judicial officers, no hearing or trial was conducted, and it did not render a decision or judgment on the merits. *Ransom*, 122 Ill. 2d at 529, 524 N.E.2d at 560.

The *Ransom* court noted that in *Cummings v. Iron Hustler Corp.*, 118 Ill. App. 3d 327, 454 N.E.2d 1078 (1983), the reviewing court had assumed, without expressly deciding, that a proceeding before the Illinois Human Rights Commission was an "action" under section 2-619(a)(3). The court then noted the analysis in the appellate opinion in *Ransom*[2] wherein the appellate court, in finding that the medical review board proceeding did not qualify as an "action," distinguished the *Cummings* decision on the basis that the administrative agency in that case was authorized to render final, binding decisions which were enforceable through a court order and that the proceedings before it

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[2] *Ransom v. Marrese*, 150 Ill. App. 3d 67, 71-72, 501 N.E.2d 702, 704-05 (1986).

were similar to a judicial proceeding. *Ransom*, 122 Ill. 2d at 529, 524 N.E.2d at 560.

Moreover, an agency is said to act in a judicial capacity when it provides: "'(1) representation by counsel, (2) pretrial discovery, (3) the opportunity to present memoranda of law, (4) examination and cross-examination at the hearing, (5) the opportunity to introduce exhibits, (6) the chance to object to evidence at the hearing, and (7) final findings of fact and conclusions of law.' [Citation.]" *Weing v. Lockheed Environmental Systems & Technologies Co.*, 312 Ill. App. 3d 236, 239-40, 726 N.E.2d 645, 648 (2000).

In an NLRB proceeding, when a complaint is issued based upon the filing of an unfair labor practices charge, the matter is first heard by an administrative law judge. All of the parties, including the administrative law judge, have the power to call, examine and cross-examine witnesses and introduce evidence into the record. 29 C.F.R. § 101.10 (1999). After the hearing, the administrative law judge prepares a decision, making findings of fact and conclusions of law, and recommends what action should be taken in the case. 29 C.F.R. § 101.11 (1999). The NLRB then reviews the entire record and issues its decision, either adopting, modifying or rejecting the findings of the administrative law judge. 29 C.F.R. § 101.12 (1999). In the event that the NLRB's order is not complied with, or the NLRB determines that it is advisable to implement the order with a court judgment or a party wishes to challenge the NLRB's decision, petition for such relief may be made to the appropriate federal court. C.F.R. § 101.14 (1999). Once an NLRB order has been enforced by a court judgment, the NLRB has the responsibility of obtaining compliance with that judgment. 29 C.F.R. § 101.15 (1999).

Based on the above, we are of the opinion that an NLRB proceeding is similar to a judicial proceeding.

Overnite argues that the *Ransom* court also refused to find the proceeding before the medical review board to be "an action" because of the delay in the review board's issuing of a decision. *Ransom*, 122 Ill. 2d at 530, 524 N.E.2d at 561 (proposed complaint was still pending after three years); see also *In re M.K.*, 284 Ill. App. 3d 449, 458, 672 N.E.2d 271, 277 (1996) (strongest argument against dismissing the state action under section 2-619(a)(3) was the lack of progress in the federal case).

Overnite asserts that it took five months for a complaint to be issued in the NLRB proceedings in this case and points to the number of time-absorbing procedural steps that must be taken before a final decision is reached.

There is no indication in *Ransom* that the court would find that a proceeding which in every other way qualified as a judicial proceeding was not an "action" for purposes of section 2-619(a)(3) merely on the basis of the amount of time it took to reach a final decision. The *Ransom* court specifically held that its construction of section 2-619(a)(3) "ensures that the controversy will be more speedily *and finally determined according to the substantive rights of the parties*. [Citation.]" (Emphasis added.) *Ransom*, 122 Ill. 2d at 530, 524 N.E.2d at 561. Therefore, the number of procedural steps in an NLRB proceeding does not make it any less a judicial proceeding.

Based upon the foregoing, we conclude that the NLRB proceeding is an action under section 2-619(a)(3).

B. The *Kellerman* Factors

Overnite contends that even if this court determines that the NLRB proceeding constitutes an "action" under section 2-619(a)(3), the circuit court abused its discretion in dismissing its complaint.

In *Kellerman*, our supreme court outlined four factors the court should consider in deciding whether a stay under section 2-619(a)(3) is warranted: comity; the prevention of multiplicity, vexation and harassment; the likelihood of obtaining complete relief in the foreign jurisdiction; and the *res judicata* effect of a foreign judgment in the local forum. *Kellerman*, 112 Ill. 2d at 447-48, 493 N.E.2d at 1053-54. Overnite maintains that none of those factors support the dismissal of its complaint in this case.

We observe, first, that this case involves a dismissal and not a stay. However, subsequent cases have extended the *Kellerman* factors to section 2-619(a)(3) dismissals. *Kapoor v. Fujisawa Pharmaceutical Co.*, 298 Ill. App. 3d 780, 789, 699 N.E.2d 1095, 1102 (1998). We further note that courts are not required to apply the *Kellerman* factors. *Kapoor*, 298 Ill. App. 3d at 789, 699 N.E.2d at 1102 (courts "should," not "must," consider them). In fact, not all four *Kellerman* factors necessarily apply to each section 2-619(a)(3) dismissal. *Kapoor*, 298 Ill. App. 3d at 789-90, 699 N.E.2d at 1102 (*res judicata* not a relevant consideration in the context of dismissal, as opposed to a stay, since after a dismissal, there is no remaining action to which *res judicata* principles can be applied).

This court has defined "comity" as "'giving respect to the laws and judicial decisions of other jurisdictions out of deference.' [Citation.]" *Hapag-Lloyd*, 312 Ill. App. 3d at 1096, 729 N.E.2d at 43. Since the inquiry does not focus on whether the causes of action are identical, if the two actions arose out of the same occurrence, the consideration of comity will not preclude a dismissal. *Kapoor*, 298 Ill. App. 3d at 790, 699 N.E.2d at 1102.

Overnite argues that maintaining both the NLRB action and its state complaint is neither a multiplicity of actions nor harassing to the defendants, since the focus of the NLRB action is relief for Overnite's employees while the

state action seeks compensatory damages for the damages suffered by Overnite. Overnite further argues that the NLRB action cannot afford it complete relief since the NLRB can only issue a cease and desist order in this type of case. See 29 U.S.C.S. § 160(c) (1992).

Two actions are for the same cause when the relief requested is based on substantially the same set of facts. *Village of Mapleton v. Cathy's Tap, Inc.*, 313 Ill. App. 3d 264, 266, 729 N.E.2d 854, 856 (2000). The crucial inquiry is whether the two actions arise out of the same transaction or occurrence, not whether the legal theory, issues, burden of proof or relief sought materially differs between the two actions. *Village of Mapleton*, 313 Ill. App. 3d at 266, 729 N.E.2d at 856. Furthermore, the purpose of the two actions need not be identical; rather, there need only be a substantial similarity of issues between them. *Village of Mapleton*, 313 Ill. App. 3d at 266, 729 N.E.2d at 856.

In the complaint issued by the NLRB in this case, the defendants were alleged to have engaged in mass picketing, trespassed on Overnite's property, inflicted injury on Overnite's security guards, damaged a vehicle belonging to an Overnite security guard and prohibited an Overnite employee from performing work by blocking his use of an Overnite vehicle. The complaint further alleged that these acts restrained and coerced Overnite's employees in violation of the National Labor Relations Act (Act) (29 U.S.C.S. § 151 *et seq.* (1992)).

The state court complaint filed in this case sought damages based upon the same conduct, *i.e.*, the acts of trespass and battery and, in addition, sought damages for alleged tortious interference with business relationship and civil conspiracy based upon additional factual allegations not set forth in the NLRB complaint.

In *Kellerman*, the plaintiffs filed a state action alleging violations of the Illinois consumer protection statutes, as

well as breach of contract and common law fraud. The trial court denied the defendants' motion to stay the state action due to the pendency of a federal class action suit. Subsequent to the trial court's denial of the stay, the federal district court dismissed the federal common law claims and referred the remaining claims to an administrative agency.

In affirming the denial of the stay, our supreme court stated as follows:

> "This subsequent action in the Federal court is of no consequence, because all of the reasons that the trial court originally found persuasive in denying the stay are just as applicable, if not more so, now. None of the counts remaining in the Federal action allege common law claims for fraud or breach of contract, or claims based on Illinois' deceptive trade and consumer fraud statutes, but relate only to whether defendant's failure to disclose its charges constitutes a violation of section 201(b) (47 U.S.C. sec. 201(b)) of the Communications Act. The issue of whether defendant's failure to disclose certain charges is 'unjust or unreasonable' under section 201(b) of the Communications Act has no relevance as to whether defendant's failure to disclose those charges constituted fraud, a breach of contract, or a violation of Illinois' statutes. While some of the same documentary evidence may be used in both cases, the lawsuits involve entirely different theories and litigation strategies." *Kellerman*, 112 Ill. 2d at 448, 493 N.E.2d at 1054.

In this case, the allegations in both actions arose from the same incident and are very similar. The focus of both actions is the punishment for the defendants' activities undertaken to unionize Overnite's employees. Therefore, unlike *Kellerman*, the issues of the NLRB complaint relate to the issues raised in the state complaint.

The dissent maintains that the trial court abused its discretion in dismissing the complaint because, at this stage of the proceedings, there is no way to know how quickly the NLRB will act and when it does act, whether it will provide complete relief to Overnite.

The fact that the NLRB action will not provide complete relief to Overnite does not, in and of itself, prevent dismissal of the action. In *Kapoor*, the court rejected the plaintiff's argument that dismissal was improper because he could not bring his state action in federal court either as a permissive or compulsive counterclaim. The court held that section 2-619(a)(3) was designed to prevent duplicative actions and that the central inquiry was " 'not whether the legal theories or the relief sought materially differs between the two actions.' [Citation.]" *Kapoor*, 298 Ill. App. 3d at 790, 699 N.E.2d at 1103; see *Katherine M. v. Ryder*, 254 Ill. App. 3d 479, 627 N.E.2d 42 (1993) (the fact that the plaintiffs were unable to assert their state law claims in federal court was irrelevant to the determination of a section 2-619(a)(3) dismissal).

Moreover, there is nothing in the record before us as to the status of the NLRB proceedings. Therefore, despite the dissent's concern, there is no basis in the record for concluding that there is or has been a lack of progress in the NLRB proceedings which would favor the denial of the dismissal motion in this case.

Finally, in exercising its discretion in ruling on a section 2-619(a)(3) motion, the court must weigh the prejudice to the nonmovant if the motion is granted against the policy of avoiding duplicative litigation. *Kapoor*, 298 Ill. App. 3d at 785-86, 699 N.E.2d at 1100. The only apparent prejudice to Overnite in this case is the inability to receive monetary compensation for the damage allegedly caused by the defendants.

While Overnite was not restricted in its choice of forum, once it chose to pursue the NLRB proceeding first, it was bound by the relief offered in that forum, which does not include monetary compensation. Yet, as we previously noted, Overnite's inability to secure monetary compensation is irrelevant for purposes of a section 2-619(a)(3) dismissal. Thus, any prejudice to Overnite resulting from its inability to receive monetary damages is both of its own making and irrelevant to the determination of the section 2-619(a)(3) motion in this case.

The dissent points to the allegations of the complaint alleging the acts of violence against the Overnite employees and asserts that Illinois residents have a substantial interest in how purported acts of labor violence are regulated. However, what Overnite seeks in its complaint is not regulation but monetary compensation, which benefits only Overnite. In the NLRB proceedings, the goal is to determine if such conduct constituted an unfair labor practice, and if it does, the NLRB can order a cease and desist order to prevent such conduct in the future. Such a determination benefits both Overnite and Illinois residents. Contrary to the dissent's view, Overnite will not be left without any remedy.

In this case, the circuit court, exercising its discretion, determined that in light of the pendency of the NLRB proceeding, dismissal of the state complaint was appropriate under section 2-619(a)(3). The record reflects that the circuit court made its decision after hearing arguments by both parties based on the *Kellerman* factors.

In maintaining that the circuit court abused its discretion by dismissing the complaint instead of ordering a stay pending the outcome of the NLRB proceeding, the dissent seemingly concedes that the *Kellerman* factors favored the defendants in this case. Therefore, the dissent's only real quarrel is with the form of relief chosen by the circuit court in this case. However, in this case, neither the defendants

nor Overnite requested a stay of the proceedings as either primary or alternative relief.

An abuse of discretion occurs, not when a reviewing court disagrees with a court's decision, but rather, when a reviewing court finds that a trial court "'"acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted."' [Citation.]" *May v. Smithkline Beecham Clinical Laboratories, Inc.*, 304 Ill. App. 3d 2424, 246, 710 N.E.2d 460, 463-64 (1999). What this court would have decided had the question of the appropriate relief been presented to us initially is therefore irrelevant.

Based upon our review of the relevant factors, we cannot say that the circuit court acted arbitrarily or ignored recognized principles of law in ordering the dismissal of Overnite's complaint pursuant to section 2-619(a)(3) in this case.

Finally, Overnite contends that the circuit court's dismissal of its complaint pursuant to section 2-619(a)(3) violates the supremacy clause of the United States Constitution. U.S. Const. art. VI, §2. However, in the cases relied on by Overnite, the supremacy clause was invoked against state laws that frustrated the ability of people to make charges of unfair labor practices to the NLRB or forced them to chose between state benefits and pursuit of an NLRB action. See *Livadas v. Bradshaw*, 512 U.S. 107, 129 L. Ed. 2d 93, 114 S. Ct. 2068 (1994); *Nash v. Florida Industrial Comm'n*, 389 U.S. 235, 19 L. Ed. 2d 438, 88 S. Ct. 362 (1967).

In *Nash*, the petitioner was disqualified from receiving compensation solely for filing an unfair labor practice charge. In *Livadas*, the state labor commissioner refused to enforce the petitioner's state right to back pay because she was covered under a collective bargaining agreement. In

both cases, the Supreme Court held that Congress did not intend for employees to be forced to chose between having state law rights and exercising their rights to pursue an unfair labor claim or to enter into a collective bargaining agreement with an arbitration clause. See *Livadas*, 512 U.S. at 117, 129 L. Ed. 2d at 105-06, 114 S. Ct. at 2074-75.

Contrary to Overnite's assertion, the present case does not invoke the supremacy clause because the application of section 2-619(a)(3) does not frustrate the enforcement of the Act. Section 2-619(a)(3) does not require a party to forego or choose between pursuing a state charge and an NLRB complaint. Rather, section 2-619(a)(3) is designed to avoid duplicative litigation and is applied to carry out that purpose. *Kellerman*, 112 Ill. 2d at 447, 493 N.E.2d at 1053. Nothing in section 2-619(a)(3) prevents a party from pursuing various forms of relief. In fact, a court may allow two actions to be maintained at the same time even though they are based upon the same facts. *May*, 304 Ill. App. 3d at 248, 710 N.E.2d at 464 (multiple actions in different jurisdictions, arising out of the same operative facts, may be maintained where the circuit court, in a sound exercise of discretion, determines that more than one action should proceed); see *Kellerman*, 112 Ill. 2d at 448, 493 N.E.2d at 1054 (lawsuits involved entirely different theories and litigations strategies).

Therefore, section 2-619(a)(3) does not run afoul of the supremacy clause.

We conclude, therefore, that the circuit court did not abuse its discretion when it dismissed Overnite's complaint pursuant to section 2-619(a)(3). Deciding this case as we do, we need not decide whether that portion of Overnite's brief dealing with the issue of federal preemption should be stricken.

The judgment of the circuit court of Cook County is affirmed.

Affirmed.

CERDA J., concurs.

JUSTICE WOLFSON, dissenting:

I agree that the NLRB proceeding is an action under section 2-619(a)(3). Although I would be inclined to say we should apply a *de novo* standard to a section 2-619(a)(3) dismissal that did not require the trial court to weigh facts or determine credibility (*Miller v. Thomas*, 275 Ill. App. 3d 779, 786-87 (1995)), I will use the majority's abuse of discretion review of the dismissal.

I respectfully dissent because I believe the trial court abused its discretion when it dismissed this action. It should have granted a stay, pending the playing out of the NLRB case.

There is no way to know, at this point, how long the NLRB will take before it does anything meaningful in this case. Nor can we know whether it will provide complete relief to the parties, a factor the trial judge should consider. See *Hapag-Lloyd (America), Inc. v. Home Insurance Co.*, 312 Ill. App. 3d 1087, 1097 (2000) ("Another discretionary factor that should have been taken into account was whether the Federal Action could provide complete relief to all of the parties").

Overnite has made serious allegations in this lawsuit. Illinois residents have a substantial interest in how purported acts of labor violence are litigated. It could be the NLRB will do all that should be done, but we cannot know that at this point. If there is no full and fair resolution of the issues raised here and at the NLRB, Overnite will be left without a remedy. That would be no service to the administration of justice in this state. Staying the Illinois proceeding would do no harm and would protect the rights of the parties in a lawsuit that raises matters of public interest.

APPENDIX C

Filed: February 1, 2000
Aurelia Pucinski, Clerk
Circuit Court of Cook County, Illinois
Chicago, Illinois

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF

COOK COUNTY, ILLINOIS

Overnite Transportation Co.,
Plaintiff,

v. No. 99 L 07779

International Brotherhood of
Teamsters, et al.,
Defendants.

ORDER

This cause coming on to be heard upon Defendants' Motion to Dismiss and the parties having appeared, submitted memoranda and argued to the Court, and the Court being duly and fully advised in the premises, hereby orders that Defendants' Motion to Dismiss, pursuant to Rule 2-619(a)(3), is granted for the reasons stated in open court and the Complaint is dismissed in its entirety. The Court further finds that there is no just reason to delay appeal and this constitutes a final order.

ENTER: /s/ Judge Diane J. Larsen
February 1, 2000
Circuit Court - 1771

APPENDIX D

Filed: July 14, 1999
Aurelia Pucinski, Clerk
Circuit Court of Cook County, Illinois
Chicago, Illinois

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF

COOK COUNTY, ILLINOIS

OVERNITE TRANSPORTATION COMPANY,
Plaintiff,

vs. No. 99 L 07779

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA, AFL-CIO, and TEAMSTERS LOCAL UNION NOS. 41, 120, 135, 414 705, 710, 714 and 781, Affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN and HELPERS OF AMERICA, AFL-CIO, PHILLIP YOUNG, RONALD FOSTER, WALTER A. LYTLE, ROBERT KRUEZER, WILLIAM HOGAN JR., ROBERT VICKNEY, JOHN MURPHY, DANE PASSO, PATRICK FLYNN, JOSEPH BERNSTEIN, KEVIN MOORE, DAVID CAMERON, and JOHN DOES THROUGH 250.
Defendants.

COMPLAINT

Plaintiff OVERNITE TRANSPORTATION COMPANY (hereinafter "Overnite"), by and through its attorneys,

MATKOV, SALZMAN, MADOFF & GUNN, states its complaint against Defendants as follows:

The Parties

1. Overnite is a Virginia corporation, and is authorized to do business in the State of Illinois. Overnite is a common carrier engaged in the interstate transportation of freight.

2. Overnite maintains a freight Service Center at 6633 West 75th Street, Bedford Park, Cook County, Illinois (hereinafter the "Bedford Park Service Center").

3. Defendant International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (hereinafter, "the International") is a voluntary, unincorporated association commonly known as a labor union. The International maintains an office at 25 Louisiana Avenue, NW, Washington, DC 20001.

4. Defendant Teamsters Local Union No. 705 (hereinafter "Teamsters Local 705") is a voluntary, unincorporated association commonly known as a labor union, and by and through its duly authorized officers and agents is, and at all times mentioned herein was, the exclusive bargaining agent representing the City Drivers employed by Overnite at the Bedford Park Service Center. Teamsters Local 705 engages in such activities in Cook County, Illinois, and maintains an office at 1645 West Jackson Boulevard, Chicago, Illinois 60612.

5. Defendant Teamsters Local Union No. 710 (hereinafter "Teamsters Local 710") is a voluntary, unincorporated association commonly known as a labor union. Teamsters Local 710 maintains an office at 4217 South Halsted Street, Chicago, Illinois 60609.

6. Defendant Teamsters Local Union No. 41 (hereinafter "Teamsters Local 41") is a voluntary, unincorporated as-

sociation commonly known as a labor union, and by and through its duly authorized officers and agents is, and at all times mentioned herein was, the exclusive bargaining agent representing certain employees employed by Overnite at 3600-3800 Kansas Avenue, Kansas City, Missouri. Teamsters Local 41 maintains an office at 4501 Van Brunt Blvd., Kansas City, Missouri, 64130.

7. Defendant Teamsters Local Union No. 120 (hereinafter "Teamsters Local 120") is a voluntary, unincorporated association commonly known as a labor union, and by and through its duly authorized officers and agents is, and at all times mentioned herein was, the exclusive bargaining agent representing certain persons employed by Overnite at its Blaine, Minnesota Service Center. Teamsters Local 120 maintains an office at 2635 University Avenue West, Suite 120, St. Paul, Minnesota, 55114.

8. Defendant Teamsters Local Union No. 135 (hereinafter "Teamsters Local 135") is a voluntary, unincorporated association commonly known as a labor union, and by and through its duly authorized officers and agents is, and at all times mentioned herein was, the exclusive bargaining agent representing certain people employed by Overnite. Teamsters Local 135 maintains an office at 1233 Shelby Street, Indianapolis, Indiana 46203.

9. Defendant Teamsters Local Union No. 414 (hereinafter "Teamsters Local 414") is a voluntary, unincorporated association commonly known as a labor union. Teamsters Local 414 maintains an office at 2644 Cass St., Fort Wayne, Indiana, 46808.

10. Defendant Teamsters Local Union No. 714 (hereinafter "Teamsters Local 714") is a voluntary, unincorporated association commonly known as a labor union. Teamsters Local 714 maintains an office at 6815 Roosevelt Road, Berwyn, Illinois 60402-1071.

11. Defendant Teamsters Local Union No. 781 (hereinafter "Teamsters Local 781") is a voluntary, unincorporated association commonly known as a labor union. Teamsters Local 781 maintains an office at 320 South Ashland Avenue, Chicago, Illinois 60607-2704.

12. Defendant Phil Young (hereinafter "Young") is the International's Director of Freight Operations and is the President of Teamsters Local 41. Various Local Teamster organizations have appointed him to lead a coordinated national bargaining committee to negotiate a contract with Overnite on behalf of separate units of Overnite employees. He is sued individually and in his capacity as agent of the International and of Teamsters Local 41.

13. Defendant Ronald Foster (hereinafter "Foster") is Secretary Treasurer of Teamsters Local 135. Various Local Teamster organizations have appointed him to participate in a coordinated national bargaining committee to negotiate a contract with Overnite on behalf of separate units of Overnite employees. He is sued individually and in his capacity as agent of Teamsters Local 135.

14. Defendant Walter A. Lytle (hereinafter "Lytle") is Secretary / Treasurer of Teamsters Local 414. Various Local Teamster organizations have appointed him to participate in a coordinated national bargaining committee to negotiate a contract with Overnite on behalf of separate units of Overnite employees. He is sued individually and in his capacity as agent of the International and Teamsters Local 414.

15. Defendant Robert Kruezer (hereinafter "Kruezer") is an Organizer for the International. He is sued individually and in his capacity as agent of the International.

16. Defendant William Hogan, Jr. (hereinafter "Hogan") is an Organizer for Teamsters Local 714. He is sued individually and in his capacity as agent of Teamsters Local 714.

17. Defendant Robert Vickney (hereinafter "Vickney") is a Business Agent of Teamsters Local 120. He is sued individually and in his capacity as agent of Teamsters Local 120.

18. Defendant John Murphy (hereinafter "Murphy") is the International's Chief Organizer. He is sued individually and in his capacity as agent of the International.

19. Defendant Dane Passo (hereinafter "Passo") is Assistant to the General President of the International. He is sued individually and in his capacity as agent of the International.

20. Defendant Patrick Flynn (hereinafter "Flynn") is President of Teamsters Local 710. Various Local Teamster organizations have appointed him to participate in a coordinated national bargaining committee to negotiate a contract with Overnite on behalf of separate units of Overnite employees. He is sued individually and in his capacity as agent of the International and of Teamsters Local 710.

21. Defendant Joseph Bernstein (hereinafter "Bernstein") is President of Teamsters Local 781. He is sued individually and in his capacity as agent of Teamsters Local 781.

22. Defendant Kevin Moore (hereinafter "Moore") is an International Representative. He is sued individually and in his capacity as agent of the International.

23. Defendant David Cameron (hereinafter "Cameron") is Communications Coordinator of the International. He is sued individually and in his capacity as agent of the International.

Jurisdiction and Venue

24. This Court has jurisdiction over all named Defendants pursuant to 735 ILCS 5/2-209. This case is brought

under the common law of the State of Illinois based upon the tortious and criminal conduct in which Defendants engaged in Bedford Park, Illinois.

25. Venue in this Court is proper pursuant to 775 ILCS 5/2-101 because the events out of which this case arises occurred, in part, in Bedford Park, Cook County, Illinois.

Background Facts

26. Beginning in the fall of 1994 and continuing until the present, the International Brotherhood of Teamsters and various of its affiliated locals (including Teamsters Locals 41, 120, 134, 414, 705, 710, 714 and 781) have been attempting to organize Overnite's freight-handling employees and to gain collective bargaining agreements for various separate units of Overnite employees.

27. On February 23, 1996, various persons affiliated with and/or operating under the direction of The International and its affiliated Local No. 100 forcibly trespassed on the property of Overnite's Cincinnati, Ohio Service Center. They sought unlawfully to coerce Overnite and its employees into accepting Teamster representation. To accomplish their objective, they trespassed on Overnite's property, forced their way onto Overnite's loading dock, occupied Overnite's service center office building, and threatened Overnite managers, supervisors and employees. The Teamsters and their agents refused to leave even when directed to do so by the police, until they decided it was in their interest to depart.

28. Following those unlawful acts, Overnite filed an unfair labor practice charge against the International and Teamsters Local Union No. 100 in Cincinnati. The Teamsters signed an informal settlement agreement (Case No. 9-CB-9302-1 and -2) with the National Labor Relations Board pledging not to engage in similar unlawful conduct

in the future. Pursuant to that agreement, the International signed a Notice posting to employees pledging not to engage in such unlawful acts in the future.

29. On June 29, 1998, Teamsters Local 41, then led by Defendant Young, struck at Overnite's Kansas City, Kansas Service Center and formed a picket line outside the Service Center property. Agents of the International including Defendant Kruezer were also present on that picket line. At that time, the Teamsters, through its agents, engaged in various criminal and wrongful acts against Overnite and its employees. Among other things, they threatened to kill Overnite employees who wanted to work, disconnected the break lines of Overnite trucks, followed and attempted to force Overnite trucks off the road, repeatedly struck Overnite trucks with clubs and rocks, and vandalized the vehicles driven by Overnite employees who tried to come to work.

30. On May 1, 1999, the International inaugurated James P. Hoffa as its General President.

31. Shortly after his inauguration, Hoffa appointed Phil Young Director of Freight Operations for the International. The Freight Operations Division is responsible for representing the Teamsters in dealings with all freight carriers, including Overnite. Hoffa also appointed Young to head the Teamsters coordinated bargaining committee, which represents various separate units of Overnite employees.

32. On or about early May, 1999, Hoffa and Young held a meeting in Chicago of numerous Teamsters Locals to discuss how to force Teamsters representation and a Teamster contract on Overnite and its employees. On information and belief, the International and the Locals (by and through their agents) agreed to use as many as 100,000 employees working for other Teamsters-represented carriers to coerce Overnite and its employees into accepting representation and whatever contract the Teamsters were willing to offer.

33. The International and its affiliate Locals began sending letters to Overnite's customers telling them that Overnite had labor troubles and that thousands of Teamsters from outside the Company would force Overnite to capitulate to the Teamsters' demands. The International also began sending e-mails to Overnite's customers suggesting that labor unrest could delay Overnite's delivery services and disrupt the customers' businesses.

34. Various spokesmen for The International and its affiliated locals began stating publicly and privately that Overnite would either be a Teamster company by the end of the year or the Teamsters would force Overnite to close its doors.

35. Either at its May meeting or at some other point prior to June 14, 1999, the International and its affiliated locals (including Teamsters Locals 41, 120, 135, 414, 705, 710, 714 and 781) entered into a conspiracy to commit various tortious and criminal acts against Overnite and its employees in order to coerce Overnite and its employees to accept representation and a Teamster contract.

36. Prior to June 14, 1999, Young and various other officers, agents, and members of the International and its affiliated locals (including Locals 41, 120, 135, 313, 705, 710, 714 and 781) agreed to come to Chicago on or about June 14, 1999. One of the purposes of their visit was to commit tortious and criminal acts against Overnite and/or its employees in furtherance of their conspiracy.

37. On June 14, 1999, the International sent copies of a press release to various persons not known to Overnite but known to Defendants pledging that Hoffa and other agents of the International and/or Defendant Locals planned to visit Overnite's Bedford Park Service Center the following morning.

38. In that release, the International expressed its intention to commit trespass on Overnite's property to coerce

Overnite and its employees into capitulating to the Teamsters' representation and contract demands.

39. In order to ensure that a large group of Teamsters would appear at Overnite's Bedford Park Service Center to participate in the trespass and other criminal acts, the International and/or Local Defendants rented or otherwise arranged for four buses and numerous vehicles owned by various of the Defendants, including agents of Teamsters Local 705, to transport Teamster members to the Bedford Park Service Center.

40. Defendants planned in advance to commit trespass and, if necessary, assault and/or battery to further their objectives at Overnite's Bedford Park Service Center on June 15, 1999. For example, various Teamsters, including Kevin Moore, and others not known to Overnite but known to Defendants, arrived at the Bedford Park Facility carrying Pick axe handles. On information and belief, they planned to intimidate Overnite and its employees and, if necessary, to force their way onto Overnite's property. Defendants disguised all or many of these axe handles by fastening thereto pre-printed picket posters provided by the International and/or one or more of Defendant Locals.

41. On the morning of June 15, the Defendants, accompanied by approximately 200 additional officers, agents and/or members of the International and Defendant Locals arrived at Overnite's Bedford Park facility. The names and addresses of these additional individuals are not presently known to Overnite but on information and belief are known to the various Defendants named herein. They were accompanied by Teamsters-affiliated photographers and videographers who took numerous pictures and videotapes of the events that followed. They were also accompanied by members of the media whom the International and/or other Defendants had contacted and invited to bear witness to their acts of tortious and criminal misconduct. Defendants

intended to use these photographs, films and media reports to frighten, intimidate and/or drive away Overnite's employees and current and prospective customers.

42. At approximately 6:50 a.m., on June 15, 1999, Defendants closed off the only road leading to Overnite's Bedford Park Service Center with the intention of blocking ingress to and egress from the Service Center and thus shutting down Overnite's operations. When an Overnite security guard in a truck attempted to pass through the crowd, an agent of the International and/or Local defendants struck the truck with an axe handle or other object, breaking off the truck's passenger side mirror.

43. At approximately 7:00 a.m., on June 15, 1999, Defendants, led by Young and various other officers and agents of the Defendants, began marching toward Overnite's Bedford Park Service Center gate. Overnite has prominently marked the Service Center's property line with a yellow line and posted the property with large "No Trespassing" signs. Notwithstanding these markers, Young led the crowd across the property line and up to Overnite's main gate.

44. Several security guards retained by Overnite met Defendants at the gate. Young demanded admittance repeatedly. The guards repeatedly told Young and the other Defendants that they could not enter Overnite's property. By having partially closed the gate and lining up shoulder to shoulder, the guards also attempted to block Defendants from advancing onto Overnite's property. One of the security guards held up both hands and shook his head "no" in order to emphasize that Defendants were being denied permission to come onto Overnite's property.

45. As they had planned and announced, Young and the other Defendants refused to stop at the gate even though security guards stood in their way and refused them entry. In order to clear a path for the crowd, Young and various

others not known to Overnite but known to Defendants began forcing their way through the gate by shoving and punching the security guards retained by Overnite to protect the property. When the security guards pulled back and made another attempt to stanch Defendants' advance, Young shoved one security guard and slugged another, sending him to the ground, whereupon one of the Defendants or a member of the mob Defendants were leading stepped on him.

46. Once past the guards, Young led the entire mob up to the front door of the main office building. Several security guards blocked the door of the building to prevent Young and the other Teamsters from entering.

47. Overnite management confronted Young and the crowd at the building. They reminded them that they were on private property without permission, and asked them to leave. Overnite management also attempted to hand Young a copy of a letter previously sent to the Teamsters' coordinated bargaining committee pointedly warning the Defendants not to trespass on Overnite property and to make appointments if they wished to visit. Young ignored the request and shouted and screamed at the Overnite managers in a threatening and combative manner.

48. Young, the other Defendants and the mob they were leading then began parading around Overnite's property and moving further from the gate. During their march, they made obscene gestures and shouted obscenities and threats at Overnite employees who refused to support them.

49. After approximately 20 to 30 minutes, the Teamsters marched off the property.

50. After leaving the property, the crowd assembled on the middle of the road leading to the Service Center. Young, William Hogan and other Defendants continued to shout threats to use whatever means necessary in order to force

Overnite and its employees to accept Teamsters representation and a Teamsters contract. In this regard, Defendant John Murphy, a spokesperson for the Teamsters, bluntly stated that Overnite would either be a Teamsters-represented company by the end of the year or "there would be no more" Overnite.

51. In addition, Young and others not known to Overnite but known to the Defendants threatened to come back to the Bedford Park Service Center and repeat their unlawful acts if Overnite and its employees did not capitulate to their demands.

52. Overnite competes vigorously with other companies that are also engaged in the business of interstate freight transportation. Overnite has developed valuable goodwill and customer relationships over many years as a result of its prompt, efficient and satisfactory service to its customers. The Teamsters' actions and threats were intended to damage and did indeed damage that goodwill and those customer relationships by making customers and prospective customers fear that the Teamsters would carry out their threats to put Overnite out of business through acts of trespass, assault, battery, and threats to commit these and other acts.

COUNT I -- TRESPASS

53. Overnite hereby realleges and incorporates by reference Complaint Paragraphs 1 through 52.

54. All of the actions of the Defendants alleged above wrongfully deprived Overnite of the rightful and lawful use of its Bedford Park Service Center and the rightful and lawful free and unhampered ingress to and egress from the Service Center, and thus constitute an unlawful trespass.

55. As a direct and proximate result of Defendants's trespass, Overnite has suffered and, if the acts are re-

peated, will continue to suffer, damage and injury by losing the exclusive and unfettered use of its Bedford Park Service Center, and has suffered compensable losses in an amount to be determined at trial.

COUNT II – TORTIOUS INTERFERENCE WITH EXISTING AND PROSPECTIVE BUSINESS RELATIONSHIPS

56. Overnite hereby realleges and incorporates by reference Complaint Paragraphs 1 through 55.

57. Overnite competes vigorously with other companies that are also engaged in the business of interstate freight transportation. Overnite has developed valuable goodwill and customer relationships over many years as a result of its prompt, efficient and satisfactory service to its customers.

58. Defendants have knowledge of Overnite's accumulated valuable goodwill and established customer relationships and prospective business relationships.

59. The Defendants's actions and threats were intended to damage Overnite's accumulated valuable goodwill and established customer relationships by making customers and prospective customers fear that the Teamsters would carry out those threats to shut Overnite down and/or put Overnite out of business through acts of trespass, assault, battery, and threats to commit these and other acts.

60. As a direct and proximate result of Defendants's tortious interference with Overnite's business relationships and prospective business relationships, Overnite has suffered and will continue to suffer expectancy damages and compensable losses in an amount to be determined at trial.

COUNT III -- CIVIL CONSPIRACY

61. Overnite hereby realleges and incorporates by reference Complaint Paragraphs 1 through 59.

62. By and through the above described acts, Defendants unlawfully conspired to participate in tortious and criminal acts against Overnite and its agents and employees in order to either force Overnite employees to accept Teamster representation against their will and force Overnite to accept a Teamsters-dictated contract, or put Overnite out of business.

63. In furtherance of their conspiracy, Defendants committed assault, trespass and battery, and made threats to commit these and other unlawful acts in the future.

64. As a direct and proximate result of Defendants's overt acts in furtherance of their conspiracy, Overnite has suffered and will continue to suffer expectancy damages and compensable losses in an amount to be determined at trial.

WHEREFORE Overnite respectfully prays:

1. That this Court award to Overnite compensatory, nominal, and punitive damages in an amount to be determined at trial.

2. That this Court order Defendants to reimburse Overnite for the costs of this lawsuit, including reasonable attorney's fees.

3. That this Court award Overnite such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

OVERNITE TRANSPORTATION COMPANY

By: /s/ Gary N. Savine
One of its Attorneys

Kenneth T. Lopatka
Kenneth F. Sparks
Gary N. Savine
MATKOV, SALZMAN, MADOFF & GUNN
Suite 2900
55 East Monroe Street
Chicago, Illinois 60603-5709
(312) 332-0777

Dated: July 14, 1999

APPENDIX E

Filed: June 23, 1999
National Labor Relations Board, Region 13
Chicago, Illinois

Case No. 13-CB-16123

SECOND AMENDED CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Labor Organization or its Agents Against Which Charge is Brought:

International Brotherhood of Teamsters, AFL-CIO *and* Teamsters Local Union Nos. 41, 120, 135, 414, 705, 710, 714 and 781, affiliates of the International Brotherhood of Teamsters, AFL-CIO

* * *

Basis of the Charge:

On June 15, 1999, the above-named labor organizations, by their officers, agents and representatives, restrained and coerced employees of Overnite Transportation Company in the exercise of their Section 7 rights by various acts, including, but not limited to, trespassing on Overnite Transportation Company property, by its National Freight Director, Phil Young, and others, assaulting and battering agents of Overnite Transportation Company in the presence of employees of Overnite Transportation Company, and by threatening to close down Overnite Transportation Company if Overnite Transportation Company does not agree to a collective bargaining agreement encompassing all Overnite Transportation Company employees, including those employees not represented by the International Brotherhood of Teamsters or one of its affiliated local unions, and thereby violated Section 8(b)(1)(A) of the Act.

* * *

Full name of party filing charge:

Overnite Transportation Company

* * *

APPENDIX F

Filed: November 18, 1999
National Labor Relations Board, Region 13
Chicago, Illinois

UNITED STATES OF AMERICA
BEFORE THE NATIONAL
LABOR RELATIONS BOARD
REGION 13

Case No. 13-CB-16123

International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 41, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 120, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 135, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 414, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 710, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 714, Affiliated with International Brotherhood of Teamsters, AFL-CIO; Teamsters Local Union No. 781, Affiliated with International Brotherhood of Teamsters, AFL-CIO

and

Overnite Transportation Company

COMPLAINT AND NOTICE OF HEARING

Overnite Transportation Company, herein called Overnite, has charged that International Brotherhood of Teamsters, AFL-CIO (herein called the International), Teamsters Local Union No. 41, affiliated with the International (herein called Local 41), Teamsters Local Union No. 120, affiliated with the International (herein called Local 120), Teamsters Local Union No. 135, affiliated with the International (herein called Local 135), Teamsters Local Union No. 414, affiliated with the International (herein called Local 414), Teamsters Local Union No. 710, affiliated with the International (herein called Local 710), Teamsters Local Union No. 714, affiliated with the International (herein called Local 714), Teamsters Local Union No. 781, affiliated with the International (herein called Local 781), and collectively called Respondent, have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq., herein called the Act. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

I

(a) The charge in this proceeding was filed by Overnite on June 15, 1999, and a copy was served by certified mail on Respondent on June 22, 1999.

(b) The first amended charge in this proceeding was filed by Overnite on June 17, 1999, and a copy was served by certified mail on Respondent on June 25, 1999.

(c) The second amended charge in this proceeding was filed by Overnite on June 23, 1999, and a copy was served by certified mail on Respondent on July 2, 1999.

II

(a) At all material times Overnite, a corporation, with an office and place of business in Bedford Park, Illinois, herein called Overnite's facility, has been engaged in the transportation and trucking business.

(b) During the last 12 months, Overnite derived gross revenues in excess of $50,000 for the transportation of freight from the State of Illinois directly to points outside the State of Illinois.

(c) At all material times Overnite has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

III

(a) At all material times the International has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times Local 41 has been a labor organization within the meaning of Section 2(5) of the Act.

(c) At all material times Local 120 has been a labor organization within the meaning of Section 2(5) of the Act.

(d) At all material times Local 135 has been a labor organization within the meaning of Section 2(5) of the Act.

(e) At all material times Local 414 has been a labor organization within the meaning of Section 2(5) of the Act.

(f) At all material times Local 710 has been a labor organization within the meaning of Section 2(5) of the Act.

(g) At all material times Local 714 has been a labor organization within the meaning of Section 2(5) of the Act.

(h) At all material times Local 781 has been a labor organization within the meaning of Section 2(5) of the Act.

IV

At all material times Phil Young held the positions of Local 41 President and Officer of the International and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

V

About June 15, 1999, Respondent, at Overnite's facility, in the presence of Overnite's employees:

(a) engaged in mass picketing;

(b) trespassed on Overnite's property;

(c) by, including but not limited to, Phil Young, in the conduct of the picketing activity inflicted injuries upon Overnite's security guards by pushing them and hitting them;

(d) inflicted damage to the vehicle of an Overnite security guard by tearing a side mirror from the vehicle;

(e) prohibited an Overnite employee from performing work by blocking his use of an Overnite vehicle.

VI

By the conduct described above in paragraph V, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that commencing on a date to be determined in the future and on consecutive days thereafter, a hearing will be conducted in Suite 800, 200 West Adams Street, Chicago, Illinois, before an administrative law judge of the Board on the allegations in this

complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent is further notified that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this complaint within 14 days from service of it, and that, unless Respondent does so, all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its answers on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practices Cases, are attached.

Dated at Chicago, Illinois, this 18th day of November, 1999.

/s/ Elizabeth Kinney

Elizabeth Kinney, Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, IL 60606

APPENDIX G

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-LAW DIVISION

OVERNIGHT [sic] TRANSPORTATION COMPANY,	)	
Plaintiff,	)	
vs.	)	No. 99 L 7779
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,	)	
Defendant.	)	

REPORT OF PROCEEDINGS HAD at the hearing of the above-entitled cause, before the Honorable DIANE J. LARSEN, Judge of said court, on Tuesday, the 1st day of February, 2000, at the hour of approximately 11:15 o'clock a.m.

PRESENT:

MS. JULIA A. MARTIN,
appeared on behalf of the Plaintiff;

MR. MARVIN GITTLER,
appeared on behalf of the Defendant.

* * *

Linda Ann Waliczek
Official Court Reporter
Circuit Court of Cook County, Illinois

Page 28:

* * *

THE COURT: I think we have exhausted the argument on 619, and the Court is going to base its decision on 619(A-3). [sic]

It does not reach the preemption issues, and it does hold that the motion should be granted on the basis of 619(A-3). [sic] That the NLRB action is a prior pending action between the two parties here for essentially the same cause, and all of the elements that are—that this Court is required to consider is articulated by Kellerman, and, therefore, this cause is dismissed.

* * *

MOTION F[illegible]

JAN 3 0 200[illegible]

No. 02-996

(2)

IN THE

Supreme Court of the United States

OVERNITE TRANSPORTATION COMPANY,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

---

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE,* AND BRIEF *AMICUS CURIAE*, OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC., IN SUPPORT OF PETITIONERS

RAYMOND J. LAJEUNESSE, JR.*
WILLIAM L. MESSENGER
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(703) 321-8510
*Counsel of Record for *Amicus Curiae*

January 2003

23 pp

IN THE

Supreme Court of the United States

No. 02-996

OVERNITE TRANSPORTATION COMPANY,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC., IN SUPPORT OF PETITIONERS

The National Right to Work Legal Defense Foundation, Inc. ("Foundation"), respectfully moves for leave to file a brief *amicus curiae* in support of the Petition for Writ of Certiorari in this case. Consent of Petitioner's attorney was obtained. Consent of attorneys representing the various Respondents was not obtained, as they either refused consent or did not respond to telephone calls seeking consent.

The Foundation is a charitable, legal aid organization formed to provide legal assistance to individual employees who have been denied, or coerced in the exercise of, their right to refrain from the collective activity foisted upon them by forced association. Foundation attorneys have represented the interests of individual employees in major Supreme Court cases involving employees' rights to refrain from joining or supporting labor organizations as a condition of employment.

The Foundation is concerned that the state policy under review will expose individual employees, for whom the Foundation exists to provide legal aid, to union campaigns of violence and intimidation. The Illinois judiciary's policy of predicating access to state law causes of action on the surrender of federal labor rights directly impedes the primary purpose of the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, ("NLRA" or "Act"): protecting employee rights. In particular, Illinois employers and employees will have a strong disincentive to filing unfair labor practice charges regarding union conduct which also causes tortious damages. This threatens to emasculate enforcement of employees' federal labor rights, leaving workers at the mercy of coercive union tactics.

While the Petitioner has aptly briefed the judicial conflict presented by this case, the Foundation's brief delineates the importance of the issue presented to employee rights and physical safety. For this reason, it is respectfully requested that the Foundation's motion for leave to file the attached *amicus curiae* brief be granted.

Respectfully submitted,

Raymond J. LaJeunesse, Jr.*
William L. Messenger
National Right to Work Legal
Defense Foundation, Inc.
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(703) 321-8510

*Counsel of Record for *Amicus Curiae*

January 2003

No. 02-996

IN THE

Supreme Court of the United States

OVERNITE TRANSPORTATION COMPANY,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

BRIEF *AMICUS CURIAE* OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC. IN SUPPORT OF PETITIONERS

RAYMOND J. LAJEUNESSE, JR.*
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*Counsel of Record for *Amicus Curiae*

January 2003

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTERESTS OF *AMICUS CURIAE* 1

QUESTION PRESENTED 3

STATEMENT OF THE CASE 3

SUMMARY OF THE ARGUMENT 3

REASONS FOR GRANTING THE PETITION 4

I. This Court Should Grant Review to Resolve the Direct Conflict Between This Court's Decisions and the Illinois Appellate Court's Construction of the Supremacy Clause of the United States Constitution 4

II. Whether a State May Preclude Those Who File Unfair Labor Practice Charges with the NLRB from Maintaining Lawsuits in State Court Is an Issue of Great Public Importance 6

CONCLUSION 13

TABLE OF AUTHORITIES

Page

Cases

Abood v. Detroit Board of Education,
431 U.S. 209 (1977) 2

ALPA v. Miller,
523 U.S. 866 (1998) 2

Allen v. IAM Local 1297,
120 L.R.R.M. (BNA) 2501 (Ohio App. 1984),
rev'd in part, 490 N.E.2d 865 (Ohio 1986) 2

Auto Workers Local 695 (T.B. Wood's),
311 N.L.R.B. 1328 (1993) 11

BE&K Construction Co. v. NLRB,
23 F.3d 1459 (8th Cir. 1994), *on remand*,
316 N.L.R.B. 1306 (1995) 8,11

Broadway Hospital, Inc.,
244 N.L.R.B. 341 (1979) 11

Carpenters (Reeves, Inc.),
281 N.L.R.B. 493 (1986) 11

Carpenters Philadelphia District Council
(Deltran Builders), 307 N.L.R.B. 172 (1992) 11

Chicago Teachers Union, Local No. 1 v. Hudson,
475 U.S. 292 (1986) 2

Communications Workers of America v. Beck,
487 U.S. 735 (1988) 2

TABLE OF AUTHORITIES - CONT.

Page

Construction Workers v. Laburnum Construction Corp.,
347 U.S. 656 (1954) 7

Crawford v. United Steelworkers of America,
335 S.E.2d 828 (Va. 1985) 2

Ellis v. Railway Clerks,
466 U.S. 435 (1984) 2

Hinote v. Local 4-23, Oil, Chemical & Atomic Workers Union, 777 S.W.2d 134 (Tex. App.), *error denied* (Tex. 1989) 2

Iron Workers Local 783 (BE&K Construction),
316 N.L.R.B. 1306 (1995) 7,8,9,11

Laborers Local 383 (Carter-Glogan Labs),
260 N.L.R.B. 1340 (1942) 11

Lehnert v. Ferris Faculty Association,
500 U.S. 507 (1991) 2

Limbach v. Hooven & Allision Co.,
466 U.S. 353 (1984) 4

Livadas v. Bradshaw,
512 U.S. 107 (1994) 3,4,5

Nash v. Florida Industrial Commission,
389 U.S. 235 (1967) ..... *passim*

NLRB v. Local 639, International Brotherhood of Teamsters, 362 U.S. 274 (1960) 10

TABLE OF AUTHORITIES - CONT.

Page

Operating Engineers Local 138 (Charles S. Skura),
148 N.L.R.B. 679 (1964) 6

Operating Engineers Local 513 (Long Construction),
145 N.L.R.B. 554 (1963) 8,9

Roofers Local 30 (Associated Builders),
227 N.L.R.B. 1444 (1977) 7,11

Service Employees District 1199 (J.J. Jordan Geriatric),
312 N.L.R.B. 90 (1993) 7,9,11

Tri-State Building & Trades Council (Structures, Inc.),
257 N.L.R.B. 295 (1981) 11

Union de Tronquistas, Local 901 (Lock Joint Pipe),
202 N.L.R.B. 399 (1973) 11

William E. Arnold Co. v. Carpenters District Council,
417 U.S. 12 (1974) 4

Constitutions, Statutes and Rules

U.S. Const. art. VI, cl. 2 3,4,5

National Labor Relations Act,
29 U.S.C. § 151 *et seq.* 2
29 U.S.C. § 153 6
29 U.S.C. 153(d) 11
29 U.S.C. § 157 ..... *passim*
29 U.S.C. § 158(b)(1)(A) ..... *passim*
29 U.S.C. § 160(a) 6

TABLE OF AUTHORITIES - CONT.

Page

29 U.S.C. § 160(c) 7
29 U.S.C. §§ 160-162 6

Illinois Code of Civil Procedure,
735 ILCS 5/2-619(a)(3) 3,5,6,10

Supreme Court Rule 37.6 1

NLRB Rules & Regulations,
§ 102.19 11
§ 102.9 6

Miscellaneous

NLRB Casehandling Manual,
§ 10040.4 11
§ 10054.1 11
§ 10054.5 11

Thiebolt, Armand J., Haggard, Thomas R., Northrup, Herbert R., *Union Violence: The Record and the Response by Courts, Legislatures, and the NLRB,* Labor Relations & Public Policy Series No. 25 (1999) 11,12

IN THE
Supreme Court of the United States

No. 02-996

OVERNITE TRANSPORTATION COMPANY,
Petitioner,
v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

BRIEF *AMICUS CURIAE* OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC., IN SUPPORT OF PETITIONERS

INTERESTS OF *AMICUS CURIAE*[1]

The National Right to Work Legal Defense Foundation, Inc. ("Foundation") is a nonprofit, charitable organization that provides free legal assistance to individual employees who, as

[1] Pursuant to Supreme Court Rule 37.6, the Foundation states that no counsel for a party authored this brief in whole or in part, and no person or entity other than the Foundation, its members or counsel, made a monetary contribution to the preparation or submission of this brief.

a consequence of compulsory unionism, have suffered violations of their right to work; their freedoms of association, speech, and religion; their rights to due process of law; and other fundamental liberties and rights guaranteed by the Constitution and laws of the United States and of the states.

The Foundation provides legal aid to employees who have been injured by union violence as a result of the exercise of their legal rights. *See, e.g., Crawford v. United Steelworkers of America*, 335 S.E.2d 828 (Va. 1985); *Allen v. IAM Local 1297*, 120 L.R.R.M. (BNA) 2501 (Ohio. App. 1984), *rev'd in part*, 490 N.E.2d 865 (Ohio 1986); *Hinote v. Local 4-23, Oil, Chemical & Atomic Workers Union*, 777 S.W.2d 134 (Tex. App.), *error denied* (Tex. 1989). Moreover, the Foundation has provided counsel in most of the major United States Supreme Court cases involving the right to refrain from joining or supporting a labor organization as a condition of employment. *ALPA v. Miller*, 523 U.S. 866 (1998); *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991); *Communications Workers of America v. Beck*, 487 U.S. 735 (1988); *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986); *Ellis v. Railway Clerks*, 466 U.S. 435 (1984); and *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

The Foundation supports this petition for a writ of certiorari because the legal issue under review directly affects workers for whom the Foundation exists to provide legal aid. The Illinois judiciary's policy of predicating access to state law causes of action on the surrender of federal labor rights directly impedes the primary purpose of the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* ("NLRA" or "Act"): protecting employee rights. In particular, Illinois employees subjected to union campaigns of violence and intimidation are effectively deprived of the Act's protection under the decision at bar.

QUESTION PRESENTED

The Foundation hereby adopts and incorporates by reference the Petitioner's Question Presented.

STATEMENT OF THE CASE

The Foundation hereby adopts and incorporates by reference the Petitioner's Statement of the Case. The Foundation emphasizes that the charges filed by Overnite Transportation Co. ("Overnite") with the National Labor Relations Board ("NLRB") were to vindicate *employees'* rights that were allegedly violated by the Teamsters. Pet. App. at 38 (Overnite alleges that the conduct of the Teamsters "has been restraining and coercing *employees* in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A)") (emphasis added).

SUMMARY OF THE ARGUMENT

The Petition should be granted because the Illinois Appellate Court's construction of the Supremacy Clause of the United States Constitution is in direct conflict with *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1967), and *Livadas v. Bradshaw*, 512 U.S. 107 (1994). The state court applied Section 2-619(a)(3) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3), to bar Overnite's state law tort actions solely because Overnite also sought enforcement of its employees' rights under the NLRA. Pet. App. 13-14. Predicating benefits of state law on abstention from exercising federal labor rights is in direct violation of the Supremacy Clause, as construed in *Nash* and *Livadas*.

The issue this case presents is important, as it affects the enforcement of the federal labor rights of thousands of Illinois citizens protected by the NLRA. Illinois' policy forces employers such as Overnite, when confronted with a concerted campaign of violence and intimidation by a labor union, to choose between seeking monetary compensation in state court for itself, or standing up for its employees' rights under the NLRA. Likewise, employees who have been harmed must choose between seeking either damages or redress of their federal labor rights. Illinois' imposition of this Hobson's choice inherently deters enforcement of the Act, thereby emasculating employee rights and leaving workers at the mercy of coercive union tactics.

REASONS FOR GRANTING THE PETITION

I. This Court Should Grant Review to Resolve the Direct Conflict Between This Court's Decisions and the Illinois Appellate Court's Construction of the Supremacy Clause of the United States Constitution.

The Illinois Appellate Court's construction of the Supremacy Clause of the United States Constitution is directly contrary to this Court's holdings in *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1967), and *Livadas v. Bradshaw*, 512 U.S. 107 (1994). Accordingly, a grant of certiorari is appropriate. *See William E. Arnold Co. v. Carpenters District Council*, 417 U.S. 12, 14 (1974) (certiorari granted to determine whether Florida Supreme Court's holding that state law claims were preempted by federal labor law "was consistent with the decisions of this Court"); *Limbach v. Hooven & Allision Co.*, 466 U.S. 353, 362 (1984) (certiorari granted because of concern that "a state court disregarded a federal constitutional ruling of this Court").

Nash involved a ruling by the Florida Industrial Commission that employees who file unfair labor practice charges with the NLRB surrender their right to state unemployment benefits. This Court found it "obvious . . . that this financial burden which Florida imposes will impede resort to the Act." 389 U.S. at 239. Thus, the Commission's ruling violated the Supremacy Clause, for a state "should not be permitted to defeat or handicap a valid national objective by threatening to withdraw state benefits from persons simply because they cooperate with the Government's constitutional plan." *Id.*

Similarly, in *Livadas*, a California court refused to enforce an employee's state right to back pay, because she was covered by a collective bargaining agreement subject to federal labor law. This Court found the policy violative of the Supremacy Clause, as it forced individuals who exercised their rights under the NLRA to surrender benefits of state law. 512 U.S. at 116 ("A state rule predicating benefits on refraining from conduct protected by federal labor law poses special dangers of interference with congressional purpose.").

The Illinois Appellate Court's application of Section 2-619(a)(3) imposes the same impediment to the exercise of rights guaranteed by the NLRA as that found unconstitutional in *Nash* and *Livadas*. Overnite's state law claims for monetary damages were dismissed solely because Overnite filed unfair labor practice charges under the NLRA. Pet. App. at 13 ("While Overnite was not restricted in its choice of forum, once it chose to pursue the NLRB proceedings first, it was bound by the relief offered in that forum."). Accordingly, the Illinois judiciary's decision to condition access to its courts on refraining from the exercise of federal statutory rights is in direct conflict with prior decisions of this Court.

II. Whether a State May Preclude Those Who File Unfair Labor Practice Charges with the NLRB from Maintaining Lawsuits in State Court Is an Issue of Great Public Importance.

A legal right is valuable only to the extent that it is enforced. The federal rights guaranteed by the NLRA can only be enforced by the NLRB upon the filing of an unfair labor practice charge. *See* 29 U.S.C. § 160(a). The Illinois Appellate Court's application of Section 2-619(a)(3) strongly deters employees and employers from filing valid unfair labor practice charges, particularly in situations involving violence and intimidation by labor unions. This emasculates the rights the NLRA guarantees employees, and leaves workers exposed to coercive union tactics.

The NLRA grants employees a variety of federal rights. *See* 29 U.S.C. § 157. Congress established procedures and an agency–the NLRB– to protect those rights against infringement. *See* 29 U.S.C. §§ 153, 160-62. However, a prerequisite to triggering enforcement of the Act is the filing of an unfair labor practice charge. *See* 29 U.S.C. § 160(a); *Nash*, 389 U.S. at 239 ("Implementation of the Act is dependent upon the initiative of individual persons"); *Operating Engineers Local 138 (Charles S. Skura)*, 148 N.L.R.B. 679, 681 (1964) ("The right to file charges is indispensable to the administration of the Act since the Board cannot initiate its own processes and no unfair labor practice complaint can issue in the absence of a valid charge."). To ensure robust enforcement, "any person" is permitted to file an unfair labor practice charge alleging an infringement of employee rights. NLRB Rules & Regulations § 102.9.

The Illinois Appellate Court's construction of Section 2-619(a)(3) discourages the filing of valid unfair labor practice charges. If conduct potentially violates both the NLRA and Illinois law, a party–whether an employee or employer–must

choose between enforcement of federal rights guaranteed by the NLRA or pursuit of civil remedies provided under state law. Illinois' imposition of this Hobson's choice naturally impedes resort to the NLRB. *See Nash*, 389 U.S. at 239.

In situations involving property damage and physical injury caused by labor unions, the price of seeking enforcement of an employee's federal labor rights is particularly steep: complete waiver of any monetary relief for the damages incurred. The NLRB's statutory authority to provide monetary remedies is sharply limited by 29 U.S.C. § 160(c) to "affirmative action including reinstatement of employees with or without back pay." This Court has found that this remedial power is not a "substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct." *Construction Workers v. Laburnum Constr. Corp.*, 347 U.S. 656, 663-64 (1954). Thus, reimbursement for property damage resulting from union unfair labor practices is not awarded by the Board because "[t]he assessment of such damages to automobiles and other property is a matter which can be handled more efficiently and effectively by State courts." *Service Employees Dist. 1199 (J.J. Jordan Geriatric)*, 312 N.L.R.B. 90, 102 (1993), *citing Roofers Local 30 (Associated Builders)*, 227 N.L.R.B. 1444 (1977).

Monetary relief available to employees under the Act, 29 U.S.C. § 160(c), is further limited by the Board's refusal to provide back pay to those who lose work due to physical injury resulting from even breathtakingly violent union actions. *See Iron Workers Local 783 (BE&K Constr.)*, 316 N.L.R.B. 1306,

1308-10 (1995),[2] and *Operating Engineers Local 513 (Long Constr.)*, 145 N.L.R.B. 554, 555-56 (1963).[3]

The Board has explicitly cited the availability of state damages as a reason for denying employees back pay for time lost due to union violence:

> We are dealing here with conduct which, though violative of the Act, is not beyond the reach of State power. The Act generally preempts State authority with respect to conduct within [the Act's] purview.

---

[2] In *BE&K Construction Co.,* the union was responsible for a riot that burned down the employer's construction camp, causing over $2 million in property damage and seriously injuring numerous people. *BE&K Constr. Co. v. NLRB*, 23 F.3d 1459, 1460 (8th Cir. 1994), *on remand,* 316 N.L.R.B. 1306 (1995).

[3] According to the Board:

> In *Long Construction*, the union violated Section 8(b)(1)(A) when its business representative led a group of about 75 to 100 men to the employer's construction site, where members of a 40- to 50-man subgroup led by the union business representative assaulted nonunionized employees of the employer by (1) breaking one's jaw, knocking out his teeth, knocking him unconscious, and rendering him unable to work for 2 months; (2) knocking another unconscious; (3) striking a foreman (who had come to the aid of an attacked employee) with brass knuckles; (4) shooting (with pistols) at another employee; (5) beating up another employee as he was trying to escape from the group; and (6) striking and knocking out another employee as he attempted to rescue his son from being attacked by the group, rendering the father unable to work for a month.

BE&K Constr., 316 N.L.R.B. at 1308, *citing Long Constr.*, 145 N.L.R.B. at 559 n.11.

> However, it does not preempt State authority to deal with breaches of the peace stemming from the use of force and violence in labor disputes. The States can act to enjoin such conduct, and they can remedy the consequences of such conduct. It is thus apparent that the lack of a Board order, awarding backpay to employees unable to work because of injuries resulting from this unlawful conduct, will not leave such employees without redress against those responsible for their injuries.

BE&K Constr., 316 N.L.R.B. at 1308-09, *quoting Long Constr.*, 145 N.L.R.B. at 555-56.

Moreover, employers are not entitled to monetary relief under the NLRA in union violence cases in any event, as their rights are not at issue. Union campaigns to intimidate workers and employers only infringe on the § 7 rights of *employees* in violation of § 8(b)(1)(A) of the Act, as Overnite's unfair labor charge alleges. *See* App. Pet. at 38; *see also J.J. Jordan Geriatric*, 312 N.L.R.B. at 98 ("long settled law" that violent acts committed by unions on picket lines violate § 8(b)(1)(A)).

Thus, the Illinois judiciary has effectively imposed a harsh monetary penalty on anyone who alerts the NLRB to violations of employee rights stemming from union violence and intimidation. A charging party in Illinois is forced to forbear monetary relief for damages incurred that are available only under state law. Perversely, the amount of the penalty increases with the extent of the harm and property damage caused by the union.[4]

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[4] Overnite's complaint does not indicate the amount of its damages. However, property damages caused by union campaigns can be excessive. For example, property damage incurred by the employer in

(continued...)

This will discourage both employees and employers from filing unfair labor charges, as many place their own financial interests ahead of the labor rights of employees.

By deterring the filing of unfair labor charges, the Illinois Appellate Court's construction of Section 2-619(a)(3) will drastically decrease the NLRB's enforcement of employees' § 7 rights when those rights are infringed upon by violent and threatening union practices. This emasculates the § 7 rights themselves, as rights that are not enforced are little better than no rights at all. Moreover, it undermines the primary legislative purpose behind § 8(b)(1)(A), which is to "protect[ ] individual workers from union organizational tactics tinged with violence, duress or reprisal." *NLRB v. Local 639, Int'l Bhd. of Teamsters*, 362 U.S. 274, 286 (1960).

Moreover, by deterring employers from filing unfair labor practice charges with the NLRB in situations involving orchestrated union violence and intimidation, Illinois leaves employees at the mercy of those coercive campaigns. Generally, only employers are in a position to successfully bring unfair labor practice charges against the concerted use of threats and physical force by a labor organization.

First, usually only an employer has information regarding the entirety of the union campaign. An individual employee is likely to witness only isolated acts. An employer, through its various agents and other means, has a more complete picture of events.

Second, employers have the financial and legal resources necessary to see that an unfair labor practice charge is properly

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[4](...continued)
BE&K Construction Co. was estimated at over $2 million. 23 F.3d at 1460.

processed by the NLRB. While the NLRB General Counsel's office is responsible for investigating and prosecuting a charge, 29 U.S.C. § 153(d), a charging party actively assists in these efforts. NLRB Casehandling Manual §§ 10040.4, 10054.1, 10054.5. Moreover, a charging party is responsible for appealing adverse determinations by the General Counsel's office itself. NLRB Rules & Regulations § 102.19.

Third, an employer is less likely to be intimidated by a labor organization prone to violence than are individual employees. Employees may fear reprisals from union militants, both at work and at home, if they file an unfair labor practice-charge. A corporate entity is unlikely to be similarly frightened.

Juridical history bears this out. A survey of the applicable jurisprudence indicates that employers have filed large numbers of unfair labor charges in which union violence and/or threats were found to violate § 8(b)(1)(A). *See BE&K Constr.; see also J.J. Jordan Geriatrics; Carpenters Philadelphia Dist. Council (Deltran Builders)*, 307 N.L.R.B. 172 (1992); *Carpenters (Reeves, Inc.)*, 281 N.L.R.B. 493 (1986); *Auto Workers Local 695 (T.B. Wood's)*, 311 N.L.R.B. 1328, 1336 (1993); *Tri-State Building & Trades Council (Structures, Inc.)*, 257 N.L.R.B. 295 (1981); *Broadway Hospital, Inc.*, 244 N.L.R.B. 341 (1979); *Roofers Local 30 (Associated Builders)*, 227 N.L.R.B. 1444 (1977); *Union de Tronquistas, Local 901 (Lock Joint Pipe)*, 202 N.L.R.B. 399 (1973); *Laborers Local 383 (Carter-Glogan Labs)*, 260 N.L.R.B. 1340 (1942).

As imposed by the Illinois Appellate Court, the disincentive to employers filing unfair labor practice charges exposes workers in Illinois to orchestrated campaigns of union violence and intimidation. This threat is grave, as an exhaustive analysis of the subject has shown that union violence is common. *See* Armand J. Thiebolt, Thomas R. Haggard, and Herbert R. Northrup, *Union Violence: The Record and the Response by*

Courts, Legislatures, and the NLRB, Labor Relations & Public Policy Series No. 25 (1999). According to this scholarly analysis, there were 9,785 reported incidents of union violence between 1975 and 1996. *Id.* at 19, *citing* "Violence Events Data File" maintained by the National Institute for Labor Relations Research. Approximately 350 such incidents occurred in Illinois. *Id.* at 20. The extensive scope and savagery of many of the union campaigns is documented throughout the monograph.[5]

The facts of the case at bar are illustrative. The allegations in Overnite's complaint, if true, demonstrate the highly organized use of unlawful and coercive conduct by the Teamsters Union. Pet. App. at 23-29. It would be exceedingly difficult for a single employee to attempt to stand up for his and his co-workers' federal labor rights against such concerted activity by the Teamsters. Only Overnite is in a strong position to see that its employees' § 7 rights are not trampled upon by the union's campaign. Yet, under the decision of the Illinois Appellate Court, Overnite and other employers now have a strong financial incentive to never file such unfair labor practice charges. As a consequence, employees and their federally guaranteed rights can only suffer.

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[5] The authors find that, between 1975 and 1996, reported acts of union violence included: 248 deaths, 1,021 incidents involving guns, 427 incidents involving explosives, and 379 acts involving "heinous activities." *Id.* at 464-65.

CONCLUSION

For the reasons set forth in the Petition and in the foregoing brief, the Foundation respectfully requests that the Petition be granted and the decision of the Illinois Appellate Court be reviewed and ultimately set aside.

Respectfully submitted,

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In The Supreme Court of the United States

OVERNITE TRANSPORTATION COMPANY,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE AND HELPERS OF AMERICA, AFL-CIO, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, First District

MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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22 pp

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Pursuant to S. Ct. Rule 37.2, the Chamber of Commerce of the United States ("Chamber") respectfully moves for leave to file a brief *amicus curiae* in support of the Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District. A copy of the proposed brief is attached. The Chamber is filing this Motion because Respondents have either refused to consent to the filing of this brief or have failed to respond to telephone calls requesting consent. In support of this Motion, the Chamber notes the following:

The Chamber is the world's largest federation of business companies and associations, with an underlying membership of nearly three million businesses and professional organizations of every size, in every industry sector, and every region of the country. An important function of the Chamber is to represent the interests of its members by filing *amicus curiae* briefs in cases involving issues of concern to American business.

Many of the Chamber's members are employers subject to the National Labor Relations Act ("NLRA"). 29 U.S.C. §§ 157 *et seq.* Chamber members have a substantial interest in the issue presented in this case, *i.e.*, whether a state court may bar an employer from seeking recompense for a monetary loss solely because it filed a charge with a federal agency that cannot award monetary relief.

The Chamber regularly files briefs as *amicus curiae* or as a party in cases such as this one that raise issues of vital concern to the business community regarding

important constitutional and labor law issues. *See, e.g., Nike, Inc. v. Kasky*, 27 Cal. 4th 939, 45 P.3d 243 (2002), *cert. granted*, 71 U.S.L.W. 3470 (U.S. Jan. 10, 2003) (No. 02-575); *State Farm Mutual Automobile Ins. Co. v. Campbell*, 2001 UT 89; 432 Utah Adv. Rep. 44 (2001), *cert. granted*, 70 U.S.L.W. 3741 (U.S. June 3, 2002) (No. 01-1289); *BE & K Construction Co. v. NLRB*, 536 U.S. 516 (2002); *McClatchy Newspapers, Inc. v. NLRB*, 131 F.3d 1026 (D.C. Cir. 1997), *cert. denied*, 524 U.S. 937 (1998); *Altemose Construction Co. v. Building & Construction Trades Council*, 751 F.2d 653 (3d Cir. 1984), *cert. denied*, 475 U.S. 1107 (1986).

The ramifications of this case are far broader than the impact on Overnite Transportation Company, as any of the Chamber's members who are victims of union violence could be forced to choose between pursuing their rights under state tort law or obtaining remedies granted under the NLRA. Moreover, this case arose in Illinois, a state where a significant number of major corporations are headquartered. The Chamber is concerned about the ability of its members to obtain monetary reimbursement for violence caused during labor disputes without forfeiting any rights granted under the NLRA. The Chamber submits that its views on these issues would be useful to the Court in determining whether to grant the Petition, and in deciding the issues posed in the event that review is granted.

Accordingly, the Chamber respectfully moves the Court to grant this Motion and allow the filing of the attached brief.

Respectfully submitted,

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QUESTION PRESENTED

The Chamber adopts and incorporates by reference the Petitioner's Question Presented.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
INTEREST OF *AMICI*	1
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	3
REASONS FOR GRANTING THE WRIT	4
I. The Court Should Grant Certiorari Because The Illinois Appellate Court's Dismissal Of Petitioner's State Law Claims Violates The Supremacy Clause Of The United States Constitution And Conflicts With Prior Holdings Of This Court.	4
II. The Court Should Grant Certiorari Because The Illinois Appellate Court's Application Of Section 2-619(A)(3) Of The Illinois Rules Of Civil Procedure Interferes With Express Congressional Intent To Allow Parties To Pursue Other Remedies.	9
CONCLUSION	14

TABLE OF AUTHORITIES

Page

CASES

Altemose Construction Co. v. Building & Construction Trades Council, 751 F.2d 653 (3d Cir. 1984) 11

Davis v. Elmira Savings Bank, 161 U.S. 275 (1896).....6, 7

H. K. Porter Co. v. NLRB, 397 U.S. 99 (1970).....10

Hill v. Florida, 325 U.S. 538 (1945)..... 6

Livadas v. Bradshaw, 512 U.S. 107 (1994) 3, 5, 6, 7, 8

Machinists Lodge 76 v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976) 11

McCulloch v. Maryland, 4 Wheat. 316 (1819)..... 6

Nash v. Florida Industrial Commission, 389 U.S. 235 (1967).....*passim*

Prater v. United Mine Workers of America, 793 F.2d 1201 (11th Cir. 1986).....12

Solo Cup Co. v. Int'l Bhd. Of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, 237 Md. 143, 205 A.2d 213 (Ct. App. Md. 1964).....12

United Workers v. Laburnum, 347 U.S. 656 (1954).....11, 12

William E. Arnold Co. v. Carpenters District Council, 417 U.S. 12 (1974)..... 5

TABLE OF AUTHORITIES – Continued

Page

STATUTES

Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3) ..... *passim*

National Labor Relations Act, 29 U.S.C. §§ 157 *et seq.* ..... *passim*

OTHER AUTHORITIES

H.R. CONF. REP. NO. 510, at 1158 (1947) 4, 9, 10

SECTION OF LABOR & EMPLOYMENT LAW, AMERICAN BAR ASSOCIATION, THE DEVELOPING LABOR LAW (Patrick Hardin and John E. Higgins, Jr., eds., 4th ed. 2001) 11

CONSTITUTIONAL PROVISIONS

U.S. CONST., art VI, cl. 2 5

INTEREST OF THE *AMICI*

The Chamber of Commerce of the United States ("Chamber") is identified in the preceding Motion for Leave to File.[1] Its interest in this matter is also expressed in that Motion and in the Summary of the Argument section below, and thus will not be restated at further length here.

STATEMENT OF THE CASE

Overnite Transportation Company ("Overnite" or "Petitioner") is a common carrier of freight with a service center in Bedford Park, Illinois. Respondents are the International Brotherhood of Teamsters, Phil Young, its Director of Freight Operations, and several Teamster Local Unions, including Local Union No. 705, the bargaining representative of certain employees at Overnite's Bedford Park facility (collectively "Respondents").

On June 15, 1999, a mob of almost 200 people, including certain Respondents, met at the Bedford Park facility and blocked the road to the service center. They damaged a security guard's truck while the guard attempted to pass through the crowd. Certain Respondents then marched through the main gate of the service center, past the "no trespassing" signs, carrying axe handles disguised as picket signs. When denied entrance onto the property, certain Respondents forced past the security guards,

[1] Pursuant to Sup. Ct. Rule 37.6, the Chamber asserts that neither Petitioner nor Respondent assisted the Chamber or its counsel, in any way, even with expenses, in preparing or submitting this brief.

shoving one guard and forcing the other to the ground. Certain Respondents then paraded around the service center, threatening managers and employees and shouting obscenities.

Overnite filed an unfair labor practice with the National Labor Relations Board ("Board") immediately, and filed an amended charge on June 23, 1999. On July 14, 1999, Overnite filed a Complaint in the Circuit Court of Cook County, Illinois, alleging that Respondents' actions on June 15 harmed Overnite. The Complaint specifically alleged that Respondents' actions constituted unlawful trespass, tortious interference with Overnite's existing customer relationships and prospective relationships, and conspiracy against Overnite in order to either force Overnite's employees to accept Teamster representation against their will and force Overnite to accept a Teamsters-dictated contract, or put Overnite out of business. Overnite requested monetary relief for these damages.

The Circuit Court of Cook County dismissed Overnite's civil court claims pursuant to Section 2-619(a)(3) of the Illinois Code of Civil Procedure. This rule allows courts to dismiss an action if there is "another action pending between the same parties for the same cause." 735 ULCS 5/2-619(a)(3). On appeal, the Illinois Appellate Court agreed with the Circuit Court's dismissal of Overnite's claims. The Supreme Court of Illinois refused to review the matter and denied Overnite's Petition without opinion.

A complete recitation of the facts may be found in Overnite's Brief.

SUMMARY OF THE ARGUMENT

Overnite Transportation Company has petitioned for a writ of certiorari to the Appellate Court of Illinois, First District, on the grounds that that court's decision in *Overnite Transportation Co. v. International Brotherhood of Teamsters* on June 19, 2002, conflicts with precedents of this Court holding that a state court may not interfere with federal rights granted under the National Labor Relations Act ("NLRA"). 29 U.S.C. §§ 157 *et seq.* The Chamber agrees and urges the Court to grant this petition.

The Illinois court has applied Section 2-619(a)(3) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3), to prevent Overnite from recovering any remedy for damages suffered as a result of violent union activity. The state court dismissed Overnite's claims solely because Overnite had already filed a charge with the Board based on the same conduct. In doing so, the state court is requiring parties to forfeit federal rights, including the ability to ask the Board to issue a cease and desist order, in order to obtain state remedies. This is in conflict with this Court's interpretation of the Supremacy Clause of the United States Constitution as shown in *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1967) and *Livadas v. Bradshaw*, 512 U.S. 107 (1994).

In addition, the Illinois Appellate Court's decision is inconsistent with congressional intent to allow parties to pursue unfair labor practice charges and other remedies. When considering the Taft-Hartley amendments to the NLRA in 1947, Congress made clear that, "when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to,

and not in lieu of, other remedies." H.R. CONF. REP. NO. 510, at 1158 (1947). To allow otherwise will create an imbalance of bargaining power. If an employer is prohibited from filing a claim in state court for damages caused by union violence simply because the employer has filed a charge with the Board, that employer is left with no ability to obtain monetary compensation for its loss. On the other hand, if an employer forgoes filing an unfair labor practice charge with the Board in order to be able to file a claim in state court for damages, those unfair labor practices will go unreported, and the Board will not be able to provide remedy to the employer or its employees. Either option gives increased power to the party utilizing violence and is in clear violation of the NLRA's purpose to promote peaceful labor management relations.

REASONS FOR GRANTING THE WRIT

I. The Court Should Grant Certiorari Because The Illinois Appellate Court's Dismissal Of Petitioner's State Law Claims Violates The Supremacy Clause Of The United States Constitution And Conflicts With Prior Holdings Of This Court.

This case presents the question of whether a state can eliminate a plaintiff's right to seek monetary damages solely because the plaintiff has filed a federal unfair labor practice charge against the defendant. While states certainly are permitted to pass statutes to avoid duplicative actions and to preserve their judicial resources, this Court has held that, under the Supremacy Clause of the United States Constitution, states may not use such statutes to burden one's exercise of federal rights.

The Illinois Appellate Court's application of Section 2-619(a)(3) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3), however, requires parties to choose between obtaining relief under state tort law or exercising federal rights granted under the National Labor Relations Act ("NLRA"). 29 U.S.C. §§ 151 *et seq*. This interpretation violates both the Supremacy Clause and this Court's holdings in *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1967) (holding that state law cannot be applied to interfere with federal labor law rights) and *Livadas v. Bradshaw*, 512 U.S. 107 (1994) (same). This Court should grant review to resolve the conflict between the Illinois Appellate Court's decision and the holdings of this Court in *Nash* and *Livadas*. *See William E. Arnold Co. v. Carpenters District Council*, 417 U.S. 12, 14 (1974) (granting review when the Florida Supreme Court's holding was inconsistent with prior Supreme Court decisions).

In *Nash*, this Court invoked the Supremacy Clause[2] and held that the Constitution does not allow state courts to force claimants to choose between filing an unfair labor practice charge and pursuing state law remedies. In that case, the Florida Industrial Commission held that an individual was ineligible to receive state unemployment compensation because she had filed an unfair labor practice charge with the Board. Such a result, however, burdened the employee's federal labor rights, as it required her to forfeit her federal labor law claims in order to

[2] The Supremacy Clause states that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof, . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby . . . " U.S. CONST., art VI, cl. 2.

obtain unemployment compensation. This Court held that such an application of the Florida statute violated the Supremacy Clause. In so holding, this Court followed the "unbroken rule" of the Supremacy clause established in 1819 in *McCulloch v. Maryland*:

> In *McCulloch v. Maryland*, 4 Wheat. 316, 436, decided in 1819, this Court declared the States devoid of power to "retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." In *Davis v. Elmira Savings Bank*, 161 U.S. 275, decided in 1896, this Court declared that a state law cannot stand that "either frustrates the purpose of the national legislation or impairs the efficiency of those agencies of the Federal government to discharge the duties, for the performance of which they were created." *Id.* at 284. And again in *Hill v. Florida*, 325 U.S. 538, 542-543, decided in 1945, this Court struck down a labor regulation saying it stood "as an obstacle to the accomplishment and education of the full purposes and objectives of Congress . . . ." *Id.* at 542.

Nash, 389 U.S. at 443.

This Court applied the same rationale almost twenty-five years later in *Livadas* when ruling that the California State Commissioner of Labor violated the Supremacy Clause in refusing to enforce wage payment provisions on behalf of individuals whose terms and conditions of employment were governed by a collective bargaining agreement. In barring enforcement claims for represented individuals, the California State Commissioner of Labor required a claimant to choose between pursuing a state

law remedy and filing a charge with the Board. This choice "was not intended by Congress . . . and cannot ultimately be reconciled with a statutory scheme premised on the centrality of the right to bargain collectively and the desirability of resolving contract disputes through arbitration." *Livadas,* 512 U.S. at 117 (citations omitted).

In the present matter, the Illinois Appellate Court has applied Section 2-619(a)(3) of the Illinois Rules of Civil Procedure in a way that forces a party to choose between pursuing a state law claim and filing a charge with the Board. Dismissing Overnite's state law tort claims simply because Overnite has filed a charge with the Board is in direct violation of the holdings in *Nash* and *Livadas* as well as in conflict with this Court's reading of the Supremacy Clause.

Under this application of Section 2-619(a)(3), a party suffering economic damages as a result of violence or other illegal activity in a labor dispute will never be able to obtain monetary compensation in state court and also file a charge with the Board (possibly leading to an enforceable cease and desist order as well as other relief), since filing a charge with the Board precludes one from filing a claim in state court. As a result, unless the damages suffered by the aggrieved party are *de minimus*, a party will almost always favor obtaining reimbursement for losses versus relief under the NLRA. Contrary to this Court's holding in *Davis*, the Illinois Appellate Court's application of Section 2-619(a)(3) "impairs the efficiency of these agencies of the Federal government," in this case the Board, by forcing parties to forfeit their right to obtain remedies from the Board, such as a cease and desist order, in order to obtain reimbursement for monetary loss. *Davis*,

161 U.S. at 283 (holding that state banking law conflicts with federal law for national banks).

Furthermore, the result in this case is even more severe than that in *Nash*, since in *Nash* the state's action *delayed* the remedy, while in this case, the state's action *completely eliminates* a remedy. In *Nash*, the plaintiff sought both back pay and unemployment compensation. The plaintiff would have been entitled to a back pay award from the Board even if she had not been able to file her unemployment compensation claim.[3] In the present case, however, Overnite, even if successful before the Board, will never have the opportunity to obtain compensation for its property damage and other damages. This complete denial of a federal remedy in order to pursue a state tort claim is clearly limiting a federal right in violation of the Supremacy Clause.

In its decision, the Illinois Appellate Court appeared to recognize that the Supremacy Clause and relevant cases prohibit a state court from limiting a claimant's federal rights. The court stated "[n]othing in section 2-619(a)(3) [of the Illinois Code of Civil Procedure] prevents a party from

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[3] While not analogous with *Nash* on this point, *Livadas* also presents a situation of lesser consequence than the case at hand. In *Livadas*, the plaintiff filed a claim with the Labor Commissioner because her final paycheck was not paid in accordance with the California's wage payment statute. The plaintiff was, in fact, paid in full a few days later. In forfeiting her wage payment claim, plaintiff forfeited the punitive damages assessed against the employer for late payment of her final paycheck, but she would have received her final paycheck under either the wage payment act or through the Board's award, even though the Board's award may not have included the punitive element.

pursuing various forms of relief." (Pet. App. 15.) However, this statement cannot be reconciled with the court's dismissal of Overnite's claims and the court's prior statement in the same decision that "once [Overnite] chose to pursue the Board proceeding first, it was bound by the relief offered in that forum, which does not include monetary compensation." (Pet. App. 13.) These two statements are fundamentally inconsistent.

II. The Court Should Grant Certiorari Because The Illinois Appellate Court's Application Of Section 2-619(A)(3) Of The Illinois Rules Of Civil Procedure Interferes With Express Congressional Intent To Allow Parties To Pursue Other Remedies.

In enacting the NLRA, Congress empowered the Board to "prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce." 29 U.S.C. § 160(a). In doing so, however, Congress specifically provided that "[t]his power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise." *Id.*

This language appeared in the original NLRA enacted in 1935. Despite numerous amendments, Congress has made a conscious decision to retain this language in the statute. When Congress considered the Taft-Hartley amendments to the NLRA in 1947, the House passed a bill omitting from Section 10(a) the above language that allowed for "other means of adjustment or prevention." H.R. CONF. REP. NO. 510, at 1158 (1947). The Senate bill, however, retained this language. *Id.* The Conference agreement, which was later enacted, adopted the Senate

version of the bill, with the Committee of Conference recognizing that,

> [b]y retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustment, the conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, *the remedy before the Board shall be in addition to, and not in lieu of, other remedies.*

Id. (emphasis added). By keeping this language, it is clear that, while Congress intended the NLRA to make the Board's jurisdiction over labor matters exclusive, Congress did not intend to preclude a party from pursuing other forms of relief, when actions so warrant, simply because the party elects to seek remedy under the NLRA.

The decision to allow other remedies is consistent with the purpose of the NLRA, which is to promote equal bargaining power and peaceful negotiations so that employers and employees may come to mutually agreeable terms. *H. K. Porter Co. v. NLRB*, 397 U.S. 99, 104 (1970) (holding that the Board has the power to compel employers and employees to negotiate, but the NLRA does not require either party to agree to particular provisions of a collective bargaining agreement.) *See also Nash*, 389 U.S. at 238 (stating that "all persons with information about [unfair labor] practices [ ] be completely free from coercion against reporting them to the Board.") Prior to the enactment of the NLRA, and even until several subsequent amendments, extremely violent and destructive labor disputes were endemic to the labor movement. In drafting the NLRA, Congress was well aware of the violence that penetrated labor-management relations, and clearly the language of the NLRA reflects Congressional intent to

balance the interests and powers of employers and employees to promote peaceful resolution of labor disputes. *See* 29 U.S.C. § 151 (encouraging "practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions."). Although the framework of the NLRA provides a structure for peaceful resolution of labor disputes, nothing in the NLRA allows for an employer, employee or union to obtain reimbursement for personal or property damage caused by violent activity. As recognized by this Court, "Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. [T]o cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation." *United Workers v. Laburnum*, 347 U.S. 656, 663-64 (1954) (allowing state court to award damages for tortious conduct in labor dispute). Further, this Court later held that "the policy of actual or threatened violence to persons, or the destruction of property, has been held most clearly to be a matter for the states to regulate." 2 SECTION OF LABOR & EMPLOYMENT LAW, AMERICAN BAR ASSOCIATION, THE DEVELOPING LABOR LAW 2211 n.225 (Patrick Hardin and John E. Higgins, Jr., eds., 4th ed. 2001) (citing *Machinists Lodge 76 v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976)).

While the purpose of the NLRA is to promote peaceful labor negotiations, the threat of labor dispute violence continues to be real, and potentially expensive, for many employers. *See, e.g., Altemose Construction Co. v. Building & Construction Trades Council*, 751 F.2d 653 (3d Cir. 1984) (noting that trial court described actions by a mob of 1,000 union members as a "virtual military assault" on an

employer, causing damages of $300,000); *Laburnum*, 347 U.S. at 656 (union and agents threatened employees with violence such that employer needed to shut down all projects for fear of employee safety); *Prater v. United Mine Workers of America*, 793 F.2d 1201 (11th Cir. 1986) (stating that during strike union members badly damaged employer's mine equipment and threatened non-union employees with clubs and guns, causing work at the mine to stop); *Solo Cup Co. v. Int'l Bhd. Of Pulp, Sulphite and Paper Mill Workers, AFL-CIO*, 237 Md. 143, 205 A.2d 213 (Ct. App. Md. 1964) (holding that state court had jurisdiction to hear tort claims for actions previously found by the Board to be unfair labor practices when union threatened employees, damaged employer's property, and damaged personal property of employees by slashing car tires, throwing paint on vehicles, and using firearms to shoot at homes and cars).

Likewise, cutting off the ability of a party to recover damages caused by violent acts during a labor dispute will also empower the opposing party to benefit from these violent, destructive actions. By requiring parties to choose between filing a charge with the Board and seeking compensation under state tort law for damage due to violence, the Illinois Court of Appeals is, in essence, giving strength to violence as a form of coercion in labor relations. This is in direct conflict with the purpose and intent of the NLRA, which was enacted to promote peaceful labor management relations.

In other words, the Illinois court's application of Rule 2-619(a)(3) allows either party to use threats and violence to obtain collective bargaining or representation election goals without fear of incurring monetary loss. Building on

the facts of the particular case at hand, during a representation campaign, a union may use violence or threats of violence to coerce employees to accept union representation. Further, the union may cause damage to employer property in an attempt to coerce the employer to recognize the union and incorporate specific contract terms. If employees vote in favor of the union because they feel threatened, the union has gained significant power by virtue of exerting threats, while the employer must choose between obtaining monetary reimbursement in state court for damages and obtaining remedy from the Board for those employees who voted for the union as a result of threats or violence.

In the above scenario, the party using threats and violence would gain significant power within the labor and management structure. Predictably, parties will elect to file state claims instead of charges with the Board since the Board cannot award compensation for damages. By forcing the parties to forfeit their labor law rights in order to file a state tort law claim, the Illinois Appellate Court allows a violent party to achieve collective bargaining goals without suffering any repercussions under the framework of the NLRA. This is clearly against the Congressional purpose of the NLRA, which was to promote peaceful labor management relations and to encourage parties to feel free to file reports of violations with the Board.

CONCLUSION

For the foregoing reasons, *amicus curiae* Chamber of Commerce of the United States respectfully asks this Court to grant Overnite's writ of certiorari.

Respectfully submitted,

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